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A

SELECTION

OF

PRECEDENTS,

FROM

THE BEST MODERN MANUSCRIPT COLLECTIONS,

AND

Drafts of Actual Practice;

WITH

GENERAL COMMON FORMS, AND VARIATIONS,

ADAPTED TO ALL THE CIRCUMSTANCES USUALLY OCCURRING;

FORMING A

SYSTEM OF CONVEYANCING;

WITH

DISSERTATIONS, AND PRACTICAL NOTES.

IN CONTINUATION OF THE WORK

BY THE LATE

W. M. BYTHEWOOD,

OF LINCOLN'S INN, ESQ. BARRISTER AT LAW.

BY

WILLIAM PALMER PARKEN, OF THE INNER TEMPLE, ESQ.

AND

JAMES STEWART, OF LINCOLN'S INN, ESQ.

BARRISTERS AT LAW.

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SETTLEMENTS (*continued*) ..... BY MR. STEWART.

TRANSFERS ..... BY MR. PARKEN.

TRUST-DEEDS ..... BY MR. PARKEN.

Comprising TRUST-DEEDS BY WAY OF SECURITY;
TRUST-DEEDS FOR CHARITABLE AND RELIGIOUS PURPOSES; AND
TRUST-DEEDS ON ARRANGEMENTS BETWEEN DEBTORS AND CREDITORS.

TRUSTEE-DEEDS ..... BY MR. STEWART.

WARRANTS OF ATTORNEY ..... BY MR. STEWART.

*** *An Index to the Notes of this Volume will be given in the next Part.*

CONTENTS.

SETTLEMENTS

(*Continued*).

Marriage Settlement of Monies secured by the Bond of the Father of the Lady; recital of the Bond, and declaration that the Trustees shall stand possessed of the Monies secured thereby, upon Trust to enforce the Payment thereof, with Power to forbear compelling Payment, and when the Monies shall be received, to be upon Trusts for the Benefit of Gentleman, Lady, and Daughters and Younger Sons of the Marriage, with usual Provisions: Proviso for Advancement by Gentleman in his Life-time: and ultimate Trust in favour of Gentleman.—(A concise Form.) Page 1

Of monies secured by bond.

Marriage Settlement, whereby Gentleman assigns a Debt due to him, to Trustees, upon Trust to enforce the Payment thereof, or not, as Gentleman and Lady, and the Trustees shall think proper, and when received, to stand possessed thereof upon the usual Trusts, for the Benefit of the Gentleman, Lady, and Children of the Marriage, with usual Provisions; Special Proviso, that if the Debtor shall pay the Debt in his Life-time, he shall become one of the Trustees. - - - - - - - - 9

Of a debt.

Marriage Settlement of Real Estate, belonging to Gentleman, and of two Sums of Money, the one belonging to the Gentleman, and the other to the Lady; Recital of Agreement to allow the Gentleman to employ the

Of sums of money and real estate.

Monies in Trade, on the Security of his Bond, and a Charge on his Real Estate, he paying the Interest until it is paid. First witnessing Part, whereby the Monies and the Securities thereof are declared to be upon Trust to allow the Monies to remain on the Securities for the Life of Gentleman, or call them in, and at his Death, invest them and pay the Interest to Lady for her separate Use, and after the Decease either of Gentleman or Lady, to the Survivor, and after the Decease of the Survivor, in Trust for the Children and Grand-Children; Hotchpot and Maintenance Clauses; and if no Children, to go to Gentleman; and if he die first, four fifths to Lady, and one fifth according to the Appointment of Gentleman: Advancement Clause for Children and Grand-Children; Covenant by Gentleman for the Payment of the Sum secured, and to indemnify Real Estate: Proviso for lending Monies again to the Husband: Second Witnessing Part, whereby Gentleman conveys Real Estate to Trustees, upon Trust, if Default shall be made in the Payment of the Sum secured, to raise the same, and stand possessed thereof, upon the Trusts hereinafter mentioned, and subject thereto, upon Trusts for the Benefit of the Gentleman, Lady, and Children of the Marriage, with usual Provisions: short Powers of Leasing for twenty-one Years, and of Sale and Exchange; Declaration that Provision for Lady shall be in bar of Dower: Short Clauses for appointing Trustees, and for their Indemnity and Reimbursement: Covenants for Title. - 12

Of mortgage sum.

Marriage Settlement of Two Sums, the one being a Mortgage Sum, and the other a Sum of Stock belonging to the Lady; the Transfer thereof being by a Separate Deed: Declaration of the Trusts thereof in the usual way, for the Benefit of the Parents and Children: Covenant by Gentleman, within Three Years to assign over a Portion of a Legacy charged on Real

Estate, upon Trusts for the Benefit of Himself, Lady, and the Children of the Marriage, by reference to the former Trusts. - - - - - - Page 27

Marriage Settlement: Father of Lady covenants to pay Lady's Fortune on Marriage; a Policy of Assurance is effected by the Gentleman, and the Trusts thereof are declared in favour of Gentleman, Lady, and the Children, with the usual Provisions, and Assignment of Corn Rents by Gentleman to secure the Payment thereof. - - - - - - - - - 31 Of policy of assurance.

Marriage Settlement of Copyholds, whereby they are covenanted to be surrendered to the Use of Trustees, upon Trust, to raise all Fines and Fees due for the Premises, and subject thereto, upon Trust, to pay the Rents to Gentleman for his Life, and then to Lady for her Life, and after the Decease of the Survivor of them, In Trust for the first and other Sons in Tail; and in Default of such Issue, In Trust for the Daughters, as Tenants in Common in Tail, with Cross Remainders; and in Default of such Issue, In Trust for Gentleman in Fee: Covenant by Gentleman, that until Surrender shall be made, he will stand seised upon the Trusts before declared: Power to raise Portions for younger Children, with other usual Provisions. - - - - - - 36 Of copyholds.

Marriage Settlement of Renewable Leaseholds, whereby they are Assigned to Trustees upon Trusts to Renew the Leases, and stand possessed thereof, upon Trusts for Gentleman, Lady, and the Children of the Marriage: Power to Lease for Twenty-one Years; Covenants for Title of Leaseholds, and Trustee Clauses; with Variations for the Leaseholds being held for Lives, and Trusts for Renewal thereof, and for Insurance of the Lives of the Cestuis que Vie. - 45 Of leaseholds.

Marriage Settlement, whereby Lady assigns a Share in a Of share in

monies, and money secured by policy. Sum of Money, upon Trust, for the Benefit of Herself, Gentleman, and the Children of the Marriage; Second Witnessing Part, whereby Monies secured by Policy, are assigned upon the same Trusts, by reference to the Trusts first declared. - - - Page 55

Of advowson. Marriage Settlement, whereby an Advowson is conveyed to Trustees, upon Trust to present Gentleman to the same, when he shall become qualified; but if Gentleman shall not be qualified, upon Trust to present such Person as Trustees shall think fit, and take a Bond to resign in favour of Gentleman; and when Gentleman shall be qualified to be presented, upon Trust to procure the Resignation thereof, and present Gentleman thereto; and after the Decease of Gentleman, or whenever he shall cease to be Rector, upon Trust for Father of Gentleman in Fee; (with forms of Bonds for the Special Resignation of a Living, in note). - - - - - - - - 58

Bond of Special Resignation - - - - 63

Bond of Resignation - - - - - - 66

Bond to enforce the Resignation of a Rectory, when the Patron's Protegé shall be fit to be presented. - 67

Of a share in a sum of money. Marriage Settlement, of a Share in a Sum of Pounds, to which Lady will be entitled on the Death of her Mother; whereby it is assigned to Trustees, upon Trust for the Benefit of Lady, and the Children of the Marriage. - - - - - - - 69

Of furniture, plate, and jewels. Witnessing Part in Marriage Settlement, whereby Furniture, Plate, and Jewels, are settled upon Trust, as to Furniture and Plate, for the separate Use of Lady, for her Life; and after her Decease, in Trust for Gentleman for Life; and after the Decease of Survivor, Upon Trusts which will nearest correspond with Uses declared in the Freeholds: Powers to Trustees

to Repair and Change Furniture and Plate : and as to the Jewels, upon such Trusts as Lady shall appoint ; and in Default of Appointment, to her separate Use for Life ; and after her Decease, in Trust for such Persons as Lady shall appoint, and in Default of Appointment, in Trust for her Next of Kin. Page 72

Power to the Trustees of Settlement to Lend a Portion of Trust Monies to Gentleman, on such Specialty Security as Trustees shall think advisable. - 76 — Power to lend.

Provision in Settlement, whereby it is agreed that if the Gentleman shall secure an equal Annuity to Lady, out of Funded Property, the Jointure Rent charged by the Settlement on the Hereditaments thereby conveyed, shall cease. - - - - - - 77 — Provision for cesser of jointure.

Marriage Settlement, whereby Freeholds are Appointed and Released to Gentleman for Life, then to Lady for Life, and afterwards to the Children of the Marriage equally ; Copyholds are surrendered to Gentleman and Trustees, upon similar Trusts ; and Monies secured by Bond are assigned upon Trusts, for the Benefit of Gentleman, Lady, and the Children of the Marriage ; Covenant to settle after-acquired Property, upon similar Trusts. - - - - - - 79 — Freeholds, copyholds, and personal estate.

Marriage Settlement of Real and Personal Property ; First Witnessing Part, whereby Father of Gentleman covenants for Payment of Annuity, during Joint Lives of Himself and Wife, to Gentleman, until he shall become Bankrupt ; and then to Lady for her Separate Use ; and after Gentleman's Decease, to Lady ; and after the Decease of the Survivor of them, the Gentleman and Lady, to Children of the Marriage, as Parents shall appoint ; and in Default of Appointment, as Trustees shall think fit : Proviso for Cesser of Annuity ; Second Witnessing Part, whereby Hereditaments are conveyed by Gentleman's Father and — Whereby annuity is granted, &c.

Mother to Trustee, upon Trust to secure the Annuity; Covenant to levy a Fine *sur concesserunt*, to the Use of Trustees, upon Trusts to secure the Payment of the Annuity: Third Witnessing Part, whereby Gentleman covenants to settle a Part of his Portion, when he comes into its Possession, upon Trusts for the Benefit of Gentleman, Lady, and the Children of the Marriage - - - - - - - Page 97

By a ward of court, of real and personal property.

Marriage Settlement of a Ward of Court, who has married without the consent of the Court, whereby Gentleman covenants that when Lady shall attain Twenty-one, to settle Freehold Hereditaments, upon Trust, for the separate Use of Lady for her Life; and after her Death, to the Use of her Sons in Tail; Remainder to the Use of her Daughters as Tenants in Common; Remainder to the Use of the Heir at Law of the Lady in Fee; Proviso that all usual Powers should be inserted in Settlement: Second Witnessing Part, whereby Copyholds are covenanted to be settled, upon Trusts which will nearest correspond with the Uses declared of the Freeholds: Third Witnessing Part, whereby Gentleman covenants that when Lady attains Twenty-one, all necessary Acts shall be done to Bar an Estate Tail in other Premises, and to convey them to the Uses already declared of the firstly settled Freeholds: Fourth Witnessing Part, whereby Leaseholds are assigned, upon Trusts which will nearest correspond with Uses declared of Freeholds: Fifth Witnessing Part, whereby Books, Plate, and Furniture, are assigned upon Trusts for the Benefit of Lady, and the Children of the Marriage: Sixth Witnessing Part, whereby Stock is assigned to Trustees, upon Trusts for the Benefit of Lady, and the Children of the Marriage, with divers Special Clauses 110

Of property to the separate use of wife.

Marriage Settlement. First Witnessing Part, whereby

Lady assigns Rent-charge upon Trusts for her Separate Use; Declaration whereby the Trusts of Stock are declared to be for the Separate Use of Lady: Second Witnessing Part, whereby Gentleman covenants to permit Lady to enjoy all the Property, both Real and Personal, which she now has, or which she may hereafter possess, for her Separate Use Page 133

Family Settlement. First Witnessing Part, whereby certain Freehold Hereditaments are conveyed to a Trustee, to the Use that two Sisters of Settlor may receive Annuities for their Lives, and subject thereto, to the Use of Trustee until Eldest Nephew attains the Age of Twenty-one Years, and then to him for Life, without Impeachment of Waste; Remainder to the Use of Trustee to preserve Contingent Remainders; Remainder to First and other Sons of Nephew in Tail; Remainder to the Use of Trustee until Second Nephew shall attain the Age of Twenty-one Years, and then to the Use of the said Second Nephew for Life; Remainder to the Use of Trustee to preserve; Remainder to the Use of his Second Nephew's Sons in Tail; Remainder to Trustee until Niece shall attain Twenty-one, and then to her Use for Life; Remainder to the Use of Trustee to preserve; Remainder to the Use of her Sons in Tail; Remainder to the Use of Settlor's Right Heirs; Accumulation Clause; Power to Nephews and Niece to Lease for Twenty-one Years; Power to Nephews to Jointure; Power to Niece to grant Rent-charge to future Husband; Proviso as to the Amount of Jointures and Rent-charges; Powers to Nephews and Niece to Portion Younger Children: Second Witnessing Part, whereby Settlor assigns Leaseholds upon Trusts which will nearest correspond with Uses declared of the Freeholds: Third Witnessing Part, whereby Settlor assigns Furniture and Goods in Mansion House to Trustee, to go with the Freeholds,

Of freeholds, leaseholds, furniture, and debts.

in the nature of Heir-looms: Fourth Witnessing Part, whereby Settlor assigns all his Debts and all other his Goods whatsoever to Trustee, upon Trust to recover the same and then dispose thereof, and stand possessed of Proceeds, upon Trust to Purchase Freehold Hereditaments, and settle the same upon the Uses declared of the Freeholds; with Variations for preserving the Enjoyment of Property to the furthest Period allowed by Law - - - Page 141

Of fees of offices. Settlement, whereby Settlor covenants with Trustees to do all necessary Acts to enable Trustees to receive the Fees of certain Offices which he holds, upon Trusts for the Payment of the Junior Clerks in One of his Offices; then for the Payment of his Debts; then to pay Premiums on Insurance already effected, and effect a fresh Insurance, and pay Premiums thereupon; then to pay the Charges of executing the Deed; and as to the Residue, (not exceeding a certain Sum,) in Trust as to One-eighth for his Children, to Accumulate for their Benefit; and as to One-third of the Remainder of the Residue, upon Trust for the Separate Use of the Wife; and as to the other Two-thirds, upon Trust for the Maintenance of the Children; and if any Residue shall remain, upon Trust to effect a fresh Insurance, and subject thereto, apply the same upon Trusts declared of the Residue of the Whole. - - - - - - - - 158

For the benefit of a relation. Settlement of Monies secured by Promissory Notes on a Relation, the Settlor being about to leave the Country, the Monies being vested in a Trustee, to be applied, at his discretion, for the Personal Comfort of the Relation; Power to invest so much as shall not be required for the purposes of the Trust. - 167

By husband on his wife. Settlement of Leaseholds by a Husband on his Wife, in

order to enable her to carry on a Trade, with Power to sell the same if she shall see fit. - Page 170

Settlement, whereby the Trusts of a Sum of Stock are declared to be in Favour of a Kept Mistress, for her Life, and after her Decease, in Trust for certain Natural Children of the Settlor; and if they shall not attain Twenty-one, in Trust for the Settlor. 174 — For kept mistress.

Bond conditioned for the Payment of an Annuity to a Kept Mistress. - - - - - - - 177 — For kept mistress.

Condition of a Bond for providing for a Kept Mistress. 179 — For kept mistress.

Family Settlement, whereby Settlor assigns Leaseholds, Stock in Trade, and Personal Estate, upon Trust, in the first place, to pay Expenses of executing Trusts; in the next place, to pay Debts of Settlor; and then upon Trust to invest the Residue, and pay Rents, Interest, and Dividends to Wife for her Life, and after her Decease, in Trust for the Children of the Settlor, in equal Shares; with a Power of Revocation and New Appointment to the Settlor—(being a Settlement intended to evade the Payment of Probate and Legacy Duty). - - - - - - - 180 — For payment of debts, and for family.

Assignment of a Term to attend the Inheritance, according to the Uses and Trusts declared thereof by a Marriage Settlement. - - - - - - - 191 — Assignment of term.

TRANSFERS.

Of a share in a Canal Company. Transfer of a Share in the Neath Canal Navigation. Page 202

Assignment of mortgage debt, and release in fee of the estates in mortgage. Transfer of a Mortgage; being an Assignment of the Mortgage Debt, and Release in Fee of the Estates in Mortgage, subject to the Equity of Redemption subsisting therein. - - - - - - 203

Of a mortgage debt, secured by a demise. Transfer of a Mortgage Debt or sum of Pounds, secured by a Demise for a Term of Years, and by the Covenant of the Mortgagor; and Assignment of the Securities for the same:—the Transferree being nominated on behalf of a Purchaser, to whom the Fee was conveyed by Indentures of Lease and Release, of even Date. - - - - - - - 208

Declaration of trust of a mortgage debt. Declaration of Trust of a Mortgage Debt or Sum of Pounds, and of the Securities for the same, by a Party to whom the same were transferred, as a Trustee for a Purchaser of the Estate comprised in the Mortgage - - - - - - - - 212

Conveyance of an estate, subject to a mortgage thereon, transferred to a trustee for the purchaser. Conveyance in Fee of Messuages and other Hereditaments to a Purchaser, subject to a Mortgage Debt of Pounds, and to a Term of Years created for securing the same - - - - - - - 215

Transfer or Assignment of Two Mortgage Debts to Trustees, upon the Trusts declared thereof by an Indenture of Settlement of even date, such Transfer being made in Contemplation of a Marriage, and with the Privity of an intended Wife - - Page 219 — Of two mortgage debts to trustees of a settlement.

Transfer or Assignment of several Mortgage and other Debts, to Trustees, for the immediate Benefit of the Owner's Children - - - - - - 225 — Of several mortgage and other debts to trustees.

Transfer of a Mortgage Debt of Pounds, and of a Term of Years, created in the Mortgaged Premises, for securing it; and Conveyance of the Fee Simple in Remainder, expectant on the Determination of the Term of and in the same Premises, to Trustees for the Transferree of the Mortgage Debt, for securing that Debt, and also a further Sum, advanced by the Transferree to the Devisees in Trust, and Executors of the Mortgagor, for the Preferment in the World of one of the Children of the Mortgagor, under a Power to raise Money for Advancement, contained in the Will of the Mortgagor - - - - - - 233 — Of a mortgage debt and term of years, and conveyance of the fee for securing a further sum.

Transfer of a Mortgage Debt, or Sum of Pounds, and of the Interest thereof, and of the Securities for the same, to a Third Party, for securing by way of Mortgage, a lesser Sum and Interest - 249 — Of a mortgage for securing a lesser sum by way of mortgage.

Release in Fee of an Estate by Trustees for Sale to a Purchaser, to Uses to bar Dower; and Transfer of several Debts or Sums secured on the Estate by way of Mortgage and Farther Charge, and of a Term of Years created by the Mortgage; to the intent that the Mortgage Debts and Term of Years may attend the — Conveyance in fee, and transfer of mortgage debts to attend the inheritance.

Inheritance, and protect the same from Mesne Incumbrances - - - - - - Page 256

Of a first mortgage, to a trustee for a second mortgagee.

Transfer from a First Mortgagee, of his Debt and Securities, to a Trustee for a Second Mortgagee; such Transfer being contained in the Second Mortgage Deed - - - - - - - - - 271

Of annuities and incumbrances, in a schedule, to a trustee for a mortgagee, by a separate deed.

Transfer of several Annuities, Judgments, and other Incumbrances, to a Trustee for the Transferree of a Mortgage, where the Annuities, Judgments, and other Incumbrances, were assigned by a Separate Instrument from the Transfer of the Mortgage, and were specified in two several Schedules at the end of the Deed of Assignment - - - - - 275

Of a mortgage of leaseholds.

Transfer of a Mortgage of Leaseholds, where a further Sum of Money is advanced - - - - - 283

TRUST-DEEDS.

Conveyance of an Estate to Trustees, upon Trusts for securing the Transfer of a Sum of Stock, until the Payment of a Sum of Money; with Dividends and Interest in the mean time - - Page 321 — For securing the transfer of stock, and the payment of money.

Assignment of Leasehold Premises, and the Furniture therein, for securing to two Sureties, a Sum equal in amount to the Sums secured by certain Promissory Notes, in which the Sureties had joined on the behalf of the Assignor - - - - - - 338 — Assignment of leaseholds, &c. for indemnifying sureties against the payment of notes.

Assignment of Household Furniture, Farming Stock, &c. to Trustees, for securing to three several Creditors the several Sums due to them from the Assignor 344 — Assignment of furniture, &c. for securing three several debts.

Memorandum to be indorsed - - - - 350 — Indorsement.

Demise for Years of Freehold Hereditaments by a Tenant for Life, and Assignment of an Annuity, payable during his Life, and of a Policy of Assurance effected on his Life, to Trustees, for securing the payment of a Sum of Money, with Interest - - - 351 — Demise by tenant for life, and assignment of a policy as a security.

Conveyance of an Estate to Trustees, to be immediately sold, and the Produce to be applied in Payment of a Debt secured thereon by way of Mortgage, and the Residue (if any) to be paid to the Owner of the Estate: (with Variations for the Circumstance of the Conveyance being made in Trust to carry into effect a Contract for Sale). - - - - 361 — Conveyance of an estate for immediate sale, to pay a debt.

Conveyance and assignment for payment of debts generally. — Conveyance of Freehold and Leasehold Estates to Trustees, for the Purpose of being sold, and the Produce paid to Creditors generally; the Creditors not being Parties to the Deed: (with Variations where the Trusts are referred to as being declared in a separate Deed of even Date) - - - - Page 366

Assignment of a legacy for securing a sum of money and interest. — Assignment of a Legacy, payable after the Decease of the Testator's Widow, to a Lender, upon Trusts for securing a Sum of Pounds and Interest 371

Accompanying a transfer of canal shares, by way of security. — Deed, or Declaration of Trust, accompanying a Transfer of Canal Shares, made for securing a Debt already owing, and future Advances, not exceeding in the whole the Sum of Pounds, with Interest. 378

Declaration of trust of a legacy, to be paid to the trustees out of Chancery, on the execution of the deed. — Declaration of Trust of a Sum of Money bequeathed by the Will of James Dick, Esq., in favour of the Poor of Forres, in Scotland; to be executed by the Trustees prior to the Payment to them of the Trust Money, pursuant to a Decree of the Court of Chancery: such Declaration of Trust being first approved by a Master in Chancery - - - 385

Declaration of trust of a sum of money, by reference to the deed on which it is indorsed. — Declaration of Trust of a Sum of 1033*l.* 6*s.* 8*d.* by reference to the Trusts declared in the Deed on which it was endorsed. - - - - - 398

Release of a messuage for the Baptist Missionary Society, and assignment of a term to attend. — Release in Fee of a Messuage or Tenement and Premises in Street, in the City of London, for the Purposes of the Baptist Missionary Society; and Assignment of the Term of One Thousand Years in the same Premises, in Trust to attend the Inheritance, 399

Assignment of a messuage for an infirmary. — Assignment, for the Residue of a Term of Years, of a Piece of Land at , with a Messuage or Infirmary lately built thereon, to Trustees, for the

Charitable Institution called "The Royal Universal Infirmary for Children." - - - Page 409

Conveyance in Fee of Twelve Messuages or Tenements to Trustees, to be occupied as Almshouses; and also of a Messuage or Tenement and Farm, for the Support of the Almshouses; and Declaration of Trust of a Sum of Stock, transferred to the same Trustees for the like purpose - - - - - - 418 — Conveyance of houses to trustees, to be used as almshouses.

Conveyance of a Piece of Land, with a Chapel erected thereon, to Trustees, for the purpose of procuring the same to be consecrated, and devoted to Ecclesiastical Purposes;—the Right of nominating the Clergyman to officiate therein being reserved to the Grantor, as Lord of the Manor of . Also a Declaration of Trust of a Sum of Stock, transferred to the same Trustees, by way of Endowment, and to secure to the Minister a certain Income. (Variations for the Endowment being made by a Conveyance of Lands, and the Curate of the Chapel being appointed by the Trustees, with Special Clauses for changing the Trustees). - - - - - - 426 — Conveyance of a chapel to be consecrated, and endowment of it.

Conveyance by Bargain and Sale of a Messuage or Tenement, to be used as a Meeting-House for Public Religious Worship, by a Congregation of Protestant Dissenters - - - - - - - - - 440 — Conveyance of chapel for the use of a society of dissenters.

Deed of Trust of a Meeting House, with a Burial Ground adjoining, for the Benefit of the Dissenters of the denomination of , at : the Management of the Trust Premises being vested in the Men-Members of the Society. (With Variations for the Management being vested in the Seat-holders.) 447 — Deed of trust of a dissenters' meeting-house.

Conveyance of a Piece of Freehold Land, with a Chapel — Of a chapel for Wesleyan Methodists.

erected thereon, to Trustees, for the use of the Society of Wesleyan Methodists at [ ] Page 468

Agreement to execute a deed of composition. Agreement between a Debtor and his Creditors, preparatory to the Execution of a Deed of Composition between them - - - - - - - 477

Release of debts, on payment of composition. Deed of Release of Debts in a Schedule, where a Composition was paid by some Friends of the Debtor 479

Declaration of trust, of surplus monies after a sale, for creditors. Declaration of Trust, in Favor of Creditors, of the Surplus of Monies to arise from the Sale of an Estate conveyed to a Trustee for Sale, by a separate Deed; and Release from the Creditors, in consideration of the Provision so made for them - - 481

Deed of composition between debtors and creditors. Deed of Composition between Two Persons in Trade, and their Creditors, where the Money agreed to be paid was payable by Instalments and secured by Promissory Notes, and two Sureties joined in the Notes given for the last of the Instalments, and where the Creditors covenanted not to sue until Default should be made in Payment of the Notes, and on Payment thereof, to execute Releases - - - 485

Deed of composition between a debtor and his creditors. Deed of Composition between a Debtor and his Creditors, where the Composition was payable by Five Instalments, and the last of them was secured by the joint Notes of the Debtor and two Sureties, and the Creditors entered into Covenants to accept the Composition if duly paid, and to execute Releases, and in the mean time not to arrest or disturb the Debtor; and where the Debtor assigned to the Sureties by way of Indemnity, the Leasehold Premises in which he carried on his Business, with Special Powers and Provisions for Sale, and for effecting an Insurance on his Life; and where full Power over the Business and

Stock in Trade of the Debtor, was vested in the Sureties until all the Instalments should be paid. Page 496

Deed of Arrangement for winding up and settling, under the Care and Superintendence of Inspectors, the Affairs of Bankers who had stopped Payment - 508 — For carrying on a banking concern under inspectors.

Deed of Covenant between a Trader and his Creditors, in regard to the Sale and Conversion into Money of the Stock in Trade and Effects of the Trader under the Controul of Inspectors, and the Division of the Proceeds amongst the Creditors, in Satisfaction of their Debts. - - - - - - - 540 — On winding up a trader's affairs for the benefit of creditors, under the controul of inspectors.

Assignment of all a Trader's Effects for the Benefit of his Creditors generally;—pursuant to the fourth section of the New Bankrupt Act, 6 Geo. 4, c. 16 - 551 — Assignment for the benefit of creditors generally, pursuant to 6 Geo. 4, c. 16, s. 4.

TRUSTEE-DEEDS.

Deed of Appointment of a New Trustee, by the Trustees of a Settlement of Personal Property, under a Power contained in the Settlement for that purpose, the former Trustee desiring to be discharged. - 573 — Appointment of new trustee.

Deed of Appointment of a New Trustee by the Trustees of a Settlement of Personal Estate, the former Trustee having become lunatic. (By Indorsement on the Settlement.) - - - - - - 575 — Appointment of new trustee.

Conveyance of Freeholds by Old Trustees, to Releasee to Uses, to the Use of Old and New Trustees, upon the former Trusts - - - - - - - 577 — Conveyance of freeholds.

Conveyance of freeholds and leaseholds. Conveyance by Old Trustees of Freeholds to Releasee to Uses, to the Use of Old and New Trustees, upon the former Trusts; and Assignment of Leaseholds to [A. B.], upon Trust to re-assign the Leaseholds to Old and New Trustees upon the former Trusts Page 579

Re-assignment of leaseholds. Re-assignment of Leaseholds by [A. B.] to Old and New Trustees, upon the former Trusts. (By Indorsement on the Deed of Assignment to [A. B.]) - 582

Conveyance of freeholds and leaseholds. Conveyance of Freeholds from Old Trustees to Releasee to Uses, to the Use of Old and New Trustees, Upon Trusts for the Benefit of a Religious Society. Assignment of Leaseholds to Trustee, upon Trust to re-assign the same to the Old and New Trustees, upon similar Trusts as the Freeholds - - 584

SETTLEMENTS (*continued*) .... BY MR. STEWART.

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PRECEDENTS

IN

CONVEYANCING.

SETTLEMENTS

(*Continued*).

MONIES SECURED BY BOND.

MARRIAGE SETTLEMENT *of Monies secured by the Bond of the Father of the Lady; recital of the Bond, and declaration that the Trustees shall stand possessed of the Monies secured thereby, upon Trust to enforce the Payment thereof, with Power to forbear compelling Payment, and when the Monies shall be received, to be upon Trusts for the benefit of Gentleman, Lady, and Daughters and Younger Sons of the Marriage, with usual Provisions: Proviso for Advancement by Gentleman in his Life-time: and ultimate Trust in favour of Gentleman.*—(A concise Form.)

THIS INDENTURE, made the day of , BETWEEN [*father of lady*] of, &c. of the first part; [*gentleman*] of, &c. of the second part; [*lady*] of, &c. of the third part; and [*trustees*] of, &c. of the fourth part. WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said [*gentleman*] and [*lady*]; (*then recite the settlement of the gentleman's property, limiting freehold hereditaments in strict settlement;*) *And* on the treaty for the said marriage, it was agreed, that the said [*father of lady*] should pay the sum of pounds to the said [*gentleman*], for his own proper use; *And* by his bond or obligation, secure to be paid to the said [*trustees*] at Michaelmas Term, in the year , the sum of pounds, to be held and applied by them upon certain trusts, for the benefit of the

Parties.

Agreement for marriage.

Agreement that father of lady should pay sum to gentleman for his own use, and should secure a further sum by his bond to trustees;

MONIES SECURED BY BOND.

and that father of lady hath given his bond accordingly, for the payment of the sum secured, and interest.

said [*gentleman*] and the said [*lady*], his intended wife, and their daughters and younger sons: AND WHEREAS in pursuance of the said agreement, the said [*father of lady*] hath paid the sum of pounds unto the said [*gentleman*], and hath executed and given to the said [*trustees*] a bond or obligation in writing, bearing even date with these presents, whereby, after reciting the said intended marriage, and that on the treaty for the said marriage, it had been agreed, that the sum of pounds, as the patrimony of the said [*lady*], should be paid and secured by him in manner after mentioned, (that is to say); that pounds, part of the said sum, should be paid to the said [*gentleman*], and that for the remainder thereof, the said [*father of lady*] should grant his bond, in the terms thereinafter specified, he the said [*father of lady*] hath bound himself, and his heirs, executors, and administrators, to make payment of the sum of pounds of lawful money of Great Britain and Ireland, as principal, to the said [*trustees*], and the survivor of them, and the heirs, executors, and administrators of such survivor, and to their assigns, at Michaelmas Term, in the year , and likewise to make payment to them of the interest of the said sum of pounds, at the highest rate allowed by law, from and after the date of the said bond or obligation, at the terms or times therein mentioned, such interest to be paid to the said [*trustees*], or to their order, in London; *And* that in trust for the ends and purposes mentioned in an indenture bearing even date with the said bond or obligation, purporting to be a settlement on the marriage of the said [*gentleman*] and [*lady*], between the persons in the said bond or obligation mentioned, and which persons are the same who are parties to this present indenture. NOW THIS INDENTURE (being the indenture referred to in the said bond or obligation) WITNESSETH, that in consideration of the said intended marriage, *It* is hereby agreed and declared between and by the parties hereto, that the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall call in and compel payment of the said sum of pounds, and lay out and invest the money arising thereby, in their or his

Witnessing part, whereby it is declared that the trustees shall compel payment of the money secured by bond, and invest the same,

MONIES SECURED BY BOND.

names or name, in the purchase of a competent share in the parliamentary stocks or public funds in Great Britain, or at interest, upon government or real securities, in England or Wales; *And* do and shall, from time to time, alter, vary, and transfer the same, for or into other stocks, funds, and securities of the like nature, when and so often as they shall think proper; AND it is hereby agreed and declared, that every such sale, alteration, variation, or transposition, shall, during the joint lives of the said [*gentleman*] and [*lady*], be made with the consent of both of them the said [*gentleman*] and [*lady*], and after the decease of such of them the said [*gentleman*] and [*lady*] as shall first depart this life, shall, during the life of the survivor of them, be made with his or her consent in writing, and shall, after the decease of such survivor, be made at the discretion and of the proper authority of the said [*trustees*], or the survivor of them, and the executors, administrators, and assigns of such survivor: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for them the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, at his and their discretion, and at his or their free will and pleasure, to forbear from requiring payment of the said sum of pounds, secured by the said bond or obligation of the said [*father of lady*], or any part of the same, for any time or times which they or he may think proper; *And* if they the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall call in or require the payment of the said sum, or of any part thereof, then and in such case, and so often as the same shall happen, it shall and may be lawful for them or him, notwithstanding such requisition, to allow further time for the payment thereof respectively; AND it is hereby agreed and declared between and by the parties to these presents, that the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof respectively, upon and for

and vary the securities, with consent of gentleman and lady, and the survivor;

and after his or her decease, with the authority of the trustees.

Power to the trustees to forbear requiring payment of the sum of —*l.*

Agreement that the trustees shall stand possessed of the trust monies,

MONIES SECURED BY BOND.

the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, hereinafter expressed and contained of and concerning the same, (that is to say); *Upon trust* that they the said [*trustees*] and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, to, or permit and suffer the same to be received by the said [*gentleman*], for and during the term of his natural life, and after his decease, to or by the said [*lady*] and her assigns for her natural life, and after the decease of the survivor of them, the said [*gentleman*] and [*lady*], *Upon trust*, that if there shall be any child or children of the said [*gentleman*] by the said [*lady*] (other than and besides an eldest or only son, who by virtue of or under the limitations contained in the said hereinbefore recited indenture, shall be for the time being entitled to the said manors and other hereditaments thereby appointed and released, or intended so to be, in possession or in remainder expectant on the decease of him the said [*gentleman*], and subject and charged as hereinbefore is mentioned,) then and in that case they the said [*trustees*], their executors and administrators, shall stand and be in possession of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce of the same, upon the trusts hereinafter expressed and contained of and concerning the same, (that is to say); if there shall be but one child of the said [*gentleman*] by the said [*lady*], (other and besides an eldest or only child who for the time being shall be entitled as aforesaid), the whole of the said trust monies, stocks, funds, and securities, shall go to such one child, to be an interest vested in such one child, being a son, at his age of twenty-one years, or being a daughter, at her age of twenty-one years, or on the day of her marriage under that age, with the consent of her guardian or guardians for the time being, which shall first happen, and shall be paid, transferred, or assigned to him or her, on, or at the same age, day, or time, if the same shall happen after the decease of the survivor of them, the said [*gentleman*] and [*lady*]; but if the same shall happen in the life-time of them, or the survivor of

Upon trust that they shall pay the interest thereof to gentleman for life, and after his decease to the lady;

and if there shall be any children besides an eldest son, upon the trusts following;

if but one child, the whole to that child, to be an interest vested at 21 or marriage, to be paid on the decease of gentleman and lady;

them, immediately after the decease of such survivor; *And* if there shall be two or more such children (other than and besides an eldest or only son, who for the time being shall be entitled as aforesaid), then such trust monies, stocks, funds, and securities, shall be for the portions of such two or more children, and shall be divided between and amongst them in equal shares; and the share or shares of such of them as shall be a son or sons shall be an interest vested or interests vested in him or them respectively, at his or their respective ages of twenty-one; *And* the share or shares of such of them as shall be a daughter or daughters, shall be an interest vested or interests vested in her or them respectively, at her or their age or respective ages of twenty-one years, or day or respective days of marriage under that age, with the consent of her or their guardian or guardians, which shall first happen, and shall be paid and transferred to him, her, or them respectively, on, or at the same ages, days, or times respectively, if the same shall respectively happen after the decease of the survivor of them the said [*gentleman*] and [*lady*], but if the same shall happen in the lifetime of them, or of the survivor of them, then immediately after the decease of such survivor; (*Proviso for the survivorship and accruer of shares, as ante*, Vol. VII. p. 572;)

MONIES SECURED BY BOND.

and if two or more children, trust monies to be divided amongst them equally, and to be an interest vested at 21, or marriage, and payable after the decease of gentleman and lady.

PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that after the decease of the said [*lady*], and until the said trust monies, stocks, funds, and securities shall become vested in such children or child as aforesaid, the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall receive the interest, dividends, and annual produce of the same, or of so much thereof as shall not for the time being have become vested, and shall apply the same, or so much thereof as they or he shall think fit, for or towards the maintenance and education of the children or child for the time being entitled thereto, in expectancy, and shall accumulate at compound interest so much of the same interest, dividends, and annual produce, as shall not for the time being be required for such maintenance and education as aforesaid, in their or his names or name, in any of the stocks, funds, or securities hereinbefore mentioned, and shall vary the stocks, funds, or securities in or upon which

Proviso for maintenance of children, and accumulation of residue of interest of their shares.

MONIES SECURED BY BOND.

such accumulations shall be invested, for or into other stocks, funds, or securities of the like nature, as occasion shall require, or they or he shall think fit; *And* the accumulations which shall be so made shall belong to the person or persons who shall ultimately become entitled to the fund from whence such accumulations shall have proceeded:

Proviso for advancement of children.

PROVIDED ALWAYS and it is hereby further agreed and declared between and by the said parties to these presents, that after the decease of the said [*lady*] it shall be lawful for the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, at their or his own discretion, to raise and apply for or towards the advancement in the world of any of such children of the said [*lady*] by the said [*gentleman*], all or any part of his or her share or expectant share in the said trust monies, stocks, funds, and securities under the trusts hereinbefore declared, notwithstanding such share or expectant share shall not then have become vested or payable under the said trusts; *And* also, that it shall and may be lawful for the trustees or trustee for the time being, during the lives of them the said [*gentleman*] and [*lady*], or in the life of the survivor of them, at their, his, or her request in writing, to pay, transfer, and assign to any child intended to be hereby provided with a portion, all or any part of his, her, or their portion under the trusts aforesaid; PROVIDED ALSO, that if the said [*gentleman*] shall in his life-time give and advance to or with any child or children, for whom a portion or portions is or are intended to be hereby provided as aforesaid, any sum or sums of money for or towards his, her, or their preferment or advancement in the world, then and in such case (unless the said [*gentleman*] shall by some writing under his hand direct the contrary) unless such advanced sum or sums of money shall be less than such portion or portions, the same shall be considered as part only of his, her, or their portion or portions, and such money only shall be raised for the portion or portions of the child or children to whom such sum or sums of money as shall be given and advanced by the said [*gentleman*], as, together with the sum or sums of money so to be given and advanced, will amount to or complete the sum of money

Power to the trustees in the life-time of gentleman and lady, to advance children.

Proviso that if gentleman shall advance child in his life-time, unless he shall declare the contrary, it shall be held to be in part or in full satisfaction of their portions;

hereby intended to be provided for such child or children respectively; but if such advanced sum or sums of money shall be equal to or greater than the whole of the provision or provisions intended to be hereby provided for such child or children severally as aforesaid, the same shall be accounted in full satisfaction of such his, her, or their portion or portions, and then and in such case the said [*gentleman*], his executors or administrators, shall be entitled to the sum of money so to be advanced by him as aforesaid, and the same shall be considered as part of his personal estate, unless the said [*gentleman*] shall by some writing under his hand direct the contrary, or make some particular disposition, or direct the application of the same; AND it is hereby agreed and declared between and by the parties to these presents, that if there shall be no child of the said [*lady*] who shall become entitled to the said trust monies, stocks, funds, and securities, under the trusts hereinbefore declared concerning the same; *Then* and in such case the said trustees or trustee for the time being shall, after the decease of the said [*lady*], and such failure of issue of the said marriage as hereinbefore is mentioned, pay, transfer, and assign the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, unto the said [*gentleman*], his executors, administrators, and assigns, for his and their own absolute use and benefit. PROVIDED ALWAYS, and it hereby agreed and declared between and by the said parties to these presents, that the receipt or receipts in writing of the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, for any monies payable to them or him by virtue of these presents, shall effectually discharge the person or persons paying the same from being answerable or accountable for the misapplication or nonapplication of the monies in such receipt or receipts expressed or acknowledged to be received, or from being obliged or concerned to see to the application of the same; PROVIDED ALWAYS, and it is hereby also agreed and declared between and by the said parties hereto, that if the trustees hereby appointed or to be appointed, as hereinafter is mentioned, or any of them, or the exe-

MONIES SECURED BY BOND.

and if there shall be no children, trust monies to go to gentleman absolutely.

Proviso that trustees' receipts shall be sufficient discharges.

Power to appoint new trustees,

MONIES SECURED BY BOND.

cutors or administrators of any of them, shall die, or refuse, or decline, or become incapable to act in the trusts aforesaid before the said trusts shall be fully executed and performed, then, and every such case, it shall be lawful for the said [*gentleman*] and [*lady*] during their lives, and for the survivor of them, and after the decease of such survivor, for the surviving and continuing trustees or trustee, or the executors or administrators of the last surviving trustee, by deed, to nominate and appoint any other person or persons to be a trustee or trustees of these presents in the place or stead of the trustee or trustees so dying, or refusing, or declining, or becoming incapable to act as aforesaid, and immediately upon the appointment of any such new trustee or trustees, the said trust monies and premises shall be duly assigned and transferred to, or otherwise vested in such new trustee or trustees, either solely, or jointly with the then surviving or continuing trustee or trustees, as occasion shall require, upon the trusts hereinbefore declared concerning the same, and that every such new trustee shall have the same powers and authorities as the trustee in whose place he shall be appointed; *And* that the said trustee hereby appointed and to be appointed as hereinbefore is mentioned, their respective executors and administrators, shall be answerable for such monies only as they respectively shall actually receive, and shall not be answerable the one for the other or others of them, or for signing receipts for the sake of conformity, or for involuntary loss or losses; *And* that it shall be lawful for them, out of the monies which shall come to their hands by virtue of these presents, to reimburse themselves and allow their co-trustee or co-trustees all their costs and expenses in discharging the trusts hereby reposed in them, or in any wise in relation thereunto. IN WITNESS, &c.

and provision for their indemnity and reimbursement.

MARRIAGE SETTLEMENT, *whereby Gentleman assigns a* DEBT *due to him, to Trustees, upon Trust to enforce the Payment thereof, or not, as Gentleman and Lady, and the Trustees shall think proper, and when received, to stand possessed thereof upon the usual Trusts, for the Benefit of the Gentleman, Lady, and Children of the Marriage, with usual Provisions; Special Proviso, that if the Debtor shall pay the Debt in his Lifetime, he shall become one of the Trustees.* OF A DEBT.

THIS INDENTURE, made the day of , BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; [C.] of, &c. of the third part; and [*trustees*] of, &c. of the fourth part: WHEREAS the said [C.] is indebted to the said [*gentleman*] in the sum of pounds of lawful money of Great Britain and Ireland, as they the said [C.] and [*gentleman*] do hereby respectively admit and declare; AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said [*gentleman*] and [*lady*]; AND WHEREAS upon the treaty for the said intended marriage, it was agreed, (amongst other things,) that the said sum of pounds, in which the said [C.] is so indebted to the said [*gentleman*] as aforesaid, should be assigned to the said [*trustees*], their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration

Parties.

That C. is indebted to gentleman.

Agreement for marriage.

Agreement to assign debt to trustees upon the trusts hereinafter mentioned.

Testatum, whereby gen-

OF A DEBT.

tleman assigns the debt,

of the said intended marriage, and of the sum of ten shillings of like lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*gentleman*] paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HE the said [*gentleman*], with the approbation of the said [*lady*], and the privity of the said [C.], (testified by their respectively being parties to and sealing and delivering these presents,) *Hath* granted, bargained, sold, assigned, and set over, and by these presents *Doth* grant, bargain, sell, assign, and set over unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said debt or sum of pounds of lawful money of Great Britain and Ireland, in which the said [C.] is indebted to the said [*gentleman*] as aforesaid, and the interest and annual produce which shall henceforth accrue and grow due for the same, *And* all the powers and authorities of the said [*gentleman*] to demand, sue for, recover, and receive the same debt or sum, interest, and annual produce, and every or any part thereof, and to give releases or other discharges for the same; *And* all the right, title, interest, property, profit, claim, and demand whatsoever, both at law and in equity, of him the said [*gentleman*], in, to, out of, or upon the same debt or sum, interest, annual produce, and premises, and every or any part thereof; TO HAVE, HOLD, RECEIVE, AND TAKE the said debt or sum of pounds, interest, annual produce, and all and singular other the premises hereby assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns absolutely, but nevertheless upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same, (that is to say); *In trust* for the said [*gentleman*], his executors, administrators, and assigns, until the said intended marriage shall be had and solemnized, and from and after the solemnization thereof, *Upon trust* that they the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, either call in and enforce payment of the said debt or sum

and full authority to receive the same,

and all the right.

Habendum, upon the trusts hereinafter mentioned (that is to say);

In trust for gentleman until marriage,

and after the marriage, upon trust to call in or take a security for the same, as gentleman and

of pounds hereby assigned, or intended so to be, or procure and take from the said [C.] a mortgage, or other security for the same, on his estates in , or a competent part thereof, as the said [*gentleman*] and [*lady*], or the survivor of them, shall, by any writing or writings under their, his, or her hands or hand, order or direct; *And* in case such security as aforesaid shall be given, do and shall continue the said debt or sum on such security, until the said [*gentleman*] and [*lady*], or the survivor of them, shall, by some writing under their, his, or her hands or hand, request or direct the same to be called in, and after the decease of the survivor of them the said [*gentleman*] and [*lady*], the said trustees or trustee shall in their or his own discretion think it proper and expedient to call in the same; *And upon this further trust*, that when and so soon as the same debt or sum, or any part thereof, shall be paid in, the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, do and shall lay out (*and invest, and vary, and stand possessed of the securities in trust for gentleman for life, and after his decease for lady for life, and after her decease, in trust for the children, as parents, or the survivor, should appoint; and in default of appointment, to the children equally; provision for hotchpot, maintenance, accumulation and advancement; and if no children, in trust for gentleman absolutely; power to convert and reconvert, and trustee clauses, as ante*, Vol. VII, p. 506—512); PROVIDED ALWAYS, and it is hereby lastly agreed and declared between and by the said parties to these presents, that if the said debt or sum of pounds, hereby assigned or intended so to be, shall be paid in during the life of the said [C.], then and in such case, and immediately thereafter, the said [C.] shall become and be a trustee of these presents, in conjunction with the other trustees or trustee for the time being hereof, and the said trust monies and premises shall thereupon be vested in him the said [C.] jointly with the said other trustees or trustee of these presents; *And* that in case the said [C.] shall afterwards die, or refuse, or decline, or become incapable to act in the said trusts, before the same shall have been fully performed, some

OF A DEBT.

lady shall direct;

and if such security shall be given, do and shall continue the same, upon the security until it is called in;

and upon trust, when the same shall be paid to trustees, to invest the same, and stand possessed thereof upon the usual trusts for the benefit of gentleman and lady and children of the marriage.

Proviso that if the debt shall be paid in the lifetime of the debtor, he shall become a joint trustee with the other trustees;

and if he afterwards shall become incapable of acting, new trustee shall be appointed.

OF A DEBT

other person shall be appointed in his place or stead, in like manner as hereinbefore is mentioned and provided with respect to the appointment of a new trustee or new trustees, in the place or stead of any of the said trustees for the time being of these presents, and so from time to time, when and so often as occasion shall require; *And* that the said [C.], and every other trustee who shall be so appointed as last aforesaid, shall have the same powers and authorities in every respect as if he had been originally appointed a trustee of these presents, and as are hereinbefore given to the other trustees for the time being of these presents. In witness, &c.

OF SUMS OF MONEY AND REAL ESTATE.

Marriage Settlement *of Real Estate, belonging to Gentleman, and of two Sums of Money, the one belonging to the Gentleman, and the other to the Lady; Recital of Agreement to allow the Gentleman to employ the Monies in Trade, on the Security of his Bond, and a Charge on his Real Estate, he paying the Interest until it is paid. First Witnessing Part, whereby the Monies and the Securities thereof are declared to be upon Trust to allow the Monies to remain on the Securities for the Life of Gentleman, or call them in, and at his Death invest them, and pay the Interest to Lady for her separate Use, and after the Decease either of Gentleman or Lady, to the Survivor, and after the Decease of the Survivor, in Trust for the Children and Grand-Children; Hotchpot and Maintenance Clauses; and if no Children, to go to Gentleman; and if he die first, four-fifths to Lady, and one fifth according to the Appointment of Gentleman: Advancement Clause for*

OF SUMS OF MONEY AND REAL ESTATE.

Children and Grand-Children; Covenant by Gentleman for the Payment of the Sum secured, and to indemnify Real Estate: Proviso for lending Monies again to the Husband; Second Witnessing Part, whereby Gentleman conveys Real Estate to Trustees, upon Trust, if Default shall be made in the Payment of the Sum secured, to raise the same, and stand possessed thereof, upon the Trusts hereinafter mentioned, and subject thereto, upon Trusts for the Benefit of the Gentleman, Lady, and Children of the Marriage, with usual Provisions; short Powers of Leasing for twenty-one Years, and of Sale and Exchange, Declaration that Provision for Lady shall be in bar of Dower: Short Clauses for appointing Trustees, and for their Indemnity and Reimbursement: Covenants for Title.

THIS INDENTURE, made the day of , BETWEEN [*gentleman*], of &c., of the first part; [*father of lady*], of &c., and [*lady*], spinster, the daughter of the said [*father of lady*], of the second part; and [*trustees*], of, &c. of the third part: WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said [*gentleman*] and [*lady*], with the consent and approbation of the said [*father of lady*], her father, testified by his being a party to and sealing and delivering these presents; AND WHEREAS the said [*gentleman*] is seised of the capital messuage and other hereditaments hereinafter mentioned to be hereby granted and released, with the appurtenances, for an estate of inheritance in fee simple; AND WHEREAS upon the treaty for the said intended marriage, the said [*gentleman*] did agree to convey the said messuage and other hereditaments to trustees, upon the trusts hereinafter mentioned; *And* the said [*father of lady*], did agree to advance the sum of two thousand pounds, as a portion with the said [*lady*], his daughter, in marriage, and the said [*gentleman*] agreed to advance the sum of five hundred pounds: *And* it was agreed that the said sums of two thousand pounds, and five hundred pounds, should be held and applied, upon the

Parties.

Recital of marriage contract between gentleman and lady.

That gentleman is seised of a certain messuage, hereinafter released;

and that on treaty for marriage, he agreed to convey the messuage on trusts after mentioned;
and father of lady agrees to advance 2000*l.* as a portion for his daughter;

OF SUMS OF MONEY AND REAL ESTATE.

and gentleman agrees to advance 500*l.*

It was agreed that the said 2000*l.* and 500*l.* should be applied on the trusts after mentioned;

but to be employed by gentleman in trade, and lent to him on the security of his bond and capital messuage;

the sum to be considered as the personal debt of gentleman, and the messuage to be a secondary security;

and the gentleman to indemnify the persons entitled to the capital messuage from the said sums.

Payment by father of lady of her fortune to trustees.

Payment by gentleman of his 500*l.* to the trustees.

Trustees pay over the said sums to gentleman.

Bond of gentleman on receipt of 2500*l.*

to be void, on payment of half a year's interest at the end of six months, and of principal, with

trusts, and for the intents and purposes hereinafter expressed and contained of and concerning the same; *But* as the said [*gentleman*] might have occasion to apply the said sums of two thousand pounds, and five hundred pounds, in trade, it was agreed that the same should be lentto him, on the security of his bond or obligation, and covenant; *And* that as a further security for the repayment thereof, the same should, as hereinafter mentioned, be charged upon and made payable out of the said capital messuage and other hereditaments; *But* it was understood and agreed, that the said sums of two thousand pounds, and five hundred pounds, were to be considered as the personal debt of the said [*gentleman*]; *And* that the proposed security of the said capital messuage and other hereditaments, should only be considered as a secondary security, and in the nature of a surety for the said debt; *And* that the said [*gentleman*] should, as between him and the persons entitled to the said capital messuage and other hereditaments, be subject and liable to the payment of the said sums of two thousand pounds, and five hundred pounds, and be bound to indemnify them against the same; AND WHEREAS in pursuance of the said agreement, the said [*father of lady*] did this day, with the privity and approbation of the said [*gentleman*], and [*lady*], pay the said sum of two thousand pounds to the said [*trustees*]; *And* the said [*gentleman*] did this day, with the privity of the said [*father of lady*], and [*lady*], his daughter, pay the sum of five hundred pounds to the said [*trustees*], and the said [*trustees*] did thereupon pay over the said sums of two thousand pounds, and five hundred pounds, to the said [*gentleman*], and immediately upon the receipt thereof, the said [*gentleman*] executed, and gave to the said [*trustees*], a bond or obligation in writing, bearing even date with these presents; and thereby became bound to them, in the sum of five thousand pounds of lawful money of Great Britain and Ireland, with a condition written under the same for making void the same, upon payment by the said [*gentleman*], his heirs, executors, administrators, or assigns, unto the said [*trustees*], their executors, administrators, and assigns, of the sum of two thousand five hundred pounds, with interest for the same, after the rate, on or at

OF SUMS OF MONEY AND REAL ESTATE.

the days, or times (*a*), and in the manner, in the condition of the bond or obligation, and hereinafter mentioned, (that is to say); on the payment of the sum of sixty-two pounds ten shillings, being one half year's interest of the said sum of two thousand five hundred pounds, after the rate of five pounds for one hundred pounds for a year, at the expiration of six months, next after the solemnization of the said intended marriage, and on payment of the sum of two thousand five hundred and sixty-two pounds ten shillings, being the whole of the said sum of two thousand five hundred pounds, and another half year's interest for the same, after the rate aforesaid, at the expiration of six calendar months then next ensuing: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, and in pursuance and further performance of the agreements entered into upon the treaty for the same, *It* is hereby agreed and declared between and by the parties to these presents, that the said [*trustees*], their executors, administrators, and assigns, shall stand and be possessed of, and interested in the said sum of two thousand five hundred pounds, so secured to them, as hereinbefore is mentioned, and intended to be further secured to them as hereinafter is mentioned, *Upon trust*, that they the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall at their or his discretion, during the life of the said [*gentleman*] either permit the same to remain on the security hereinbefore mentioned and referred to, or call in and compel payment thereof, or of any part thereof; *And* after the decease of the said [*gentleman*], do and shall call in, and compel payment of, and receive the same, and upon the receipt thereof, or or any part thereof, either during the life-time of the said [*gentleman*] or after his decease, lay out and invest the same respectively, in the names or name of the said [*trustees*], or the survivor of them, his executors or administrators, either in the public stocks, or parliamentary funds of Great Britain, or at interest upon government or real securities in England, and do and shall, with the consent in writing of the said [*gentleman*]

another half-year's interest, at the end of six months more.

First witnessing part, whereby it is declared, that the trustees shall stand possessed of trust monies,

Upon trust to permit the same to remain during the life of gentleman, on the securities hereinbefore mentioned, or to call them in;

and after his decease to call them in;

and on receipt thereof, or of any part thereof, during the life of gentleman, or after his decease, to invest it in the funds, and vary the same with consent of husband and wife;

(*a*) As to when a bond of this nature is forfeited, see 3 Byth. by Stewart, 204.

OF SUMS OF MONEY AND REAL ESTATE.

and [*lady*], during their joint lives; and after the decease of such of them as shall first depart this life, with the consent in writing of the survivor of them, during his or her life; and after the decease of such survivor, at their or his own discretion, vary and transfer the same stocks, funds, and securities, as often as shall be thought expedient or proper, or do and shall during the lives or life of the said [*gentleman*] and [*lady*], or the survivor of them, with their, his, or her consent in writing, lay out the same or any part thereof, in the purchase of freehold, leasehold, or copyhold lands, tenements, and hereditaments; *And* with such consent as aforesaid, during the lives or life of the said [*gentleman*] and [*lady*], or the survivor of them, and after the decease of such survivor, as and when the said [*trustees*], or the survivor of them, his executors and administrators, shall in their or his discretion think expedient, resell the same; and the same, in the mean time, to be considered as personal estate, and the rents and profits thereof to be applied accordingly; and do and shall lay out and invest the money arising from such resale or resales, upon such stocks, funds, and securities as aforesaid, and alter, vary, and transfer the same from time to time, as hereinbefore is mentioned; and do and shall during the joint lives of the said [*lady*] and [*gentleman*], pay the same dividends, and annual produce of the said trust monies, stocks, funds, and securities, to such persons, and for such purposes, as the said [*lady*] shall by any writing under her hand appoint, but not so as to deprive herself thereof by sale, mortgage, or otherwise, by way of anticipation; and in default of such appointment, into her own hands, for her separate use, notwithstanding her intended coverture; and after the decease of such of them the said [*gentleman*] and [*lady*], who shall first depart this life, do and shall during the life of the survivor of them, pay the interest, dividends, and annual produce of the same trust monies, stocks, funds, and securities, to such survivor; and after his or her decease, do and shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, *In trust* for all and every or such one or more, exclusively of the other and others of

or if they are dead, then at their own discretion;

or lay out the same in the purchase of lands, with consent;

and with such consent, or at their own discretion, if both intended husband and wife should be dead, to resell the same;

in the mean time to be considered as personal estate;

and invest the money in the funds,

and vary the same as before mentioned;

and during lives of intended husband and wife, to pay dividends to her appointees, but not so as to deprive herself by way of anticipation;

in default of appointment, into her own hands;

after decease of one of them, to pay dividends to the survivor;

and after death of survivor, to stand possessed of the trust funds,

In trust for all the children of intended mar-

the children or child of the said intended marriage, or of their issue (*b*) born in the life time of the said [*gentleman*] and [*lady*], or the survivor of them, of any child or children, at such ages, days, or times, and if more than one, in such parts, shares, and proportions, as the said [*gentleman*] and [*lady*] shall by any deed or writing to be sealed and delivered in the presence of two or more credible witnesses, direct or appoint; and in default of such joint direction or appointment, then as the survivor of them the said [*gentleman*] and [*lady*] shall by any deed or writing, to be sealed and delivered in the presence of two or more credible witnesses, or by his or her last will or testament, to be signed and published in the presence of and attested by three or more credible witnesses, direct or appoint; and in default of such direction or appointment, *In trust* for

riage, or such one or more of them, or of the issue of any children, at such ages, days, or times, and in such shares, as intended husband and wife shall appoint;

and in default thereof, as the survivor shall appoint;

and in default thereof,

(*b*) These words are necessary, as it is now well settled, that a power to appoint to children will not authorize an appointment to grandchildren, *Alexander* v. *Alexander*, 2 Ves. 640; *Bristow* v. *Warde*, 2 Ves. jun. 336; *Brudenell* v. *Elwes*, 1 East, 442. 7 Ves. 382. But when the word *issue* immediately follows the word children, so as to qualify its confined meaning, then it would seem that an appointment to grandchildren, if valid in other respects, would be supported, *Hockley* v. *Mawbey*, 1 Ves. jun. 150; and see *Wythe* v. *Blackman*, 1 Ves. sen. 196; *Gale* v. *Bennett*, Amb. 681; *Royle* v. *Hamilton*, 4 Ves. 437. But it may very frequently happen, that appointments to grandchildren are void on another ground,—that of tending to a perpetuity; for if an appointment to them would be void, if inserted in the settlement giving the power of appointment, it will also be void, although made after the settlement. Thus, for instance, if [A.] on the marriage of his daughter [C.] conveys lands to the use of his daughter's husband [B.] for life, remainder to the use of his daughter [C.] for life, remainder to the use of such children of the marriage, for such estates as his daughter's husband and his daughter shall jointly appoint; and in default of appointment, to the use of their children or child in fee. [B.] and [C.] afterwards have a child [E.], and it frequently happens that the lands are appointed by [B.] and [C.], to the use of [E.] for life, *remainder to the use of his or her children, remainders over.* Now in these limitations the largest estate which [B.] and [C.] can appoint, is an estate for life to their child [E.]; for if the appointments intended to be made by them had been inserted in the original settlement, they would stand thus: To the use of [B.] for life, remainder to the use of [C.] for life, remainder to the use of [E.] (*unborn*), for life, remainder to the use of the

Appointment to grand children, when void.

OF SUMS OF MONEY AND REAL ESTATE.

In trust for all the children of the marriage, who being a son, shall attain 21, or die under that age, leaving issue; or, being a daughter, shall attain 21 or marry; to be divided equally, if more than one; but no child, taking under appointment, shall be entitled to any share of the

all and every the children and child of the said [*gentleman*], by the said [*lady*], who being a son or sons, shall attain the age of twenty-one years, or die under that age, leaving issue of his or their body or respective bodies living at the time of his or their decease or respective deceases, or born in due time after; or being a daughter or daughters, shall attain the age of twenty-one years or marry; and to be divided between or among such children (if more than one), in equal shares and proportions; *And* if there shall be but one such child, then the whole to be *In trust* for that one child; but no child taking under any appointment, to be made in exercise of the aforesaid powers, shall be entitled to any share of the unappointed part of the said trust monies, stocks, funds, and securities, without bring-

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children of [E.] (*unborn*), remainders over; so that here would have been a limitation to the unborn issue of an unborn person, which would have been clearly void; for although it is now clear that an estate for life may be limited to an unborn person, yet this is the utmost point to which the law allows the appointor's power to stretch, unless it be in favour of persons in *esse*. See *Routledge* v. *Dorril*, 2 Ves. 357; *Hay* v. *Earl of Coventry*, 3 T. R. 86. But the estate for life will be good, although the subsequent limitations are void, *Adams* v. *Adams*, Cowp. 651; *Bristow* v. *Warde*, 2 Ves. 336.

But if the power were a *general* power, enabling [B.] and [C.] to give the lands to any person whatever in fee, here the period for the commencement of the limitations in point of perpetuity, is the time of *the execution* of the power, and not of its *creation;* because a person having a general power of appointment, is looked upon as having the fee simple in the lands. See *Halsey* v. *Halls*, 7 T. R. 194; Sug. Pow. 434. And if such a power had been given to [B.] and [C.], then on the birth of [E.] they might have appointed the lands to [E.] for life, remainder to [E.'s] children, for such estates as they pleased.

And if the power is given to a person in *esse*, to appoint an estate amongst his grandchildren or remoter issue, born during his life, and even if it be given generally in favour of all his grandchildren, &c., yet if he only appoint to such as are living at his death, it will be good, *Hockley* v. *Mawbey*, 1 Ves. jun. 150; *Routledge* v. *Dorril*, 2 Ves. jun. 357; Sug. Pow. 440. But where the appointment is made generally amongst persons, some within the line of perpetuity, and also to others not within it, the appointment will be wholly void, and will not be sustained in favour of the persons within the line. Thus, if a

OF SUMS OF MONEY AND REAL ESTATE.

ing his or her share into hotchpot, and accounting for the same accordingly; *And* after the decease of the survivor of them, the said [*gentleman*] and [*lady*], and until the whole of the said trust monies, stocks, funds, and securities, shall become vested in such child or children, or issue as aforesaid, do and shall pay and apply the interest, dividends, and annual produce thereof, unto and for the benefit of all and every the children or child, or issue aforesaid for the time being entitled, for or towards their maintenance or benefit, equally between or among them, if more than one; and if there shall be no child or issue of the said intended marriage, who shall become entitled to the aforesaid monies, stocks, funds, and securities, under the trusts hereinbefore declared of and concerning the same; and if the said [*gentleman*]

unappointed part, without bringing the appointed part into hotchpot; and after the decease of both intended husband and wife, till vested in the children, to pay dividends for children and grandchildren's maintenance.

If no issue entitled to portions, and in-

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power is given to appoint to grandchildren, and a general appointment is made in favour of all the donee's grandchildren, without any qualification confining it to those who are living at his death, the whole appointment will be void, as it may embrace objects beyond the line of perpetuity. This may seem to clash with the rule before mentioned, of holding an estate for life to an unborn person to be good, although the remainders over are void; but it is now well settled, *Gee* v. *Audley*, 2 Ves. jun. 365, cit. *Routledge* v. *Dorril*, 2 Ves. jun. 357.

But there are two cases in which limitations of this nature, although void at law, will be supported in equity. The first is when the appointment is by will, under the doctrine of *cy pres*, which need not be discussed in this place. The other will be considered at some length.

Let us revert for a moment to the case before put, (p. 17), and let it be supposed that [B.] and [C.] wish to exercise the power given to them in the settlement in favour of [E.] and the children of [E.] Now if [E.] is of age, and able to settle his or her property, and is a party to the settlement, and executes it, although there are no expressions to this effect in the deed, it will be held to be a settlement by [E.] as to the children, and will thus be rendered valid.

The first case in which this doctrine was acted upon, was the case of *Langston* v. *Blackmore*, Amb. 289, in which Lord *Hardwicke* held that an appointment to an object of the power, and to his family, with his consent, was valid: and this rule has since been fully confirmed by the cases of *Routledge* v. *Dorril*, 2 Ves. jun. 362; *Alexander* v. *Alexander*, 2 Ves. 642. And the rule will be the same whether the appointment is made on the marriage of the child, or on any other occasion, *Langston* v. *Blackmore*, *ubi sup.*; *White* v. *St Barbe*, 1 Ves. & Bea. 399.

OF SUMS OF MONEY AND REAL ESTATE.

tended husband survives intended wife, trustees to transfer the trust-monies to intended husband.

If intended husband die in the life-time of intended wife, and after such failure of issue, trustees to transfer four-fifths of trust-monies to intended wife;

shall survive the said [*lady*], the said [*trustees*], and the survivor of them, his executors and administrators, do and shall, after the decease of the said [*lady*], so dying in the life-time of the said [*gentleman*], and such failure of issue of such intended marriage as aforesaid, pay, transfer, and assign the said trust monies, stocks, funds, and securities, to the said [*gentleman*], his executors, administrators, and assigns; but if the said [*gentleman*] shall depart this life during the life time of the said [*lady*], then after his decease, and such failure of issue as aforesaid, do and shall pay, transfer, and assign, four equal fifth parts or shares of the said trust monies, stocks, funds, and securities, to the said [*lady*], her executors, administrators, and assigns; and do and shall, after the decease of the said [*gentleman*], and

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And if the child be a female and married, and the estate be personalty, if her husband is a party to, and execute the settlement, the same rule will prevail, *White* v. *St. Barbe, ubi sup.* But the child or the husband of the child must actually execute the settlement; and the mere circumstance of its being a party to the deed, will not be sufficient, *Brudenell* v. *Elwes*, 7 Ves. 382; and the child must, of course, be of age at the time of the appointment, or it will not be valid. All the cases mentioned above relate to personal estate; but it has generally been thought that the same principle would apply to the equitable interest in real estate, although in such a case the legal estate would go to the persons who would take in default of appointment; and the late case of *Tucker* v. *Sanger*, 13 Pr. 607; 1 M'Clell. S. C., is in conformity to this opinion. In this case, the testator gave certain estates, called Reeds and Hammetts, in trust for his daughter M. T., for life, and after her decease, to the use of such of her child or children, for such estate or estates, and in such parts, shares, and proportions, manner, and form, as J. S. by deed or will should appoint; and in case of default of appointment, then to all and every the child and children of the said M. T. equally, to be divided between them share and share alike, as tenants in common, and their heirs and assigns for ever.

Tucker v. *Sanger.*

J. S., by deed dated Dec. 10, 1821, in pursuance of the aforesaid power, appointed the said estates to the use of the plaintiff (one of the objects of the power) in fee. By a deed dated the 15th December, 1821, the estates were conveyed according to the terms of a previous agreement between the appointor and the appointee, to a trustee in fee, to the use of another trustee for a term of two hundred

such failure of issue as aforesaid, pay, transfer, and assign, the remaining equal fifth part of the said trust monies, stocks, funds, and securities, to such person or persons, and for such intents and purposes, as the said [*gentleman*] shall, by any writing under his hand, appoint; or in default ofsuch appointment, to the executors or administrators of the said [*gentleman*], as part of his personal estate; PROVIDED ALWAYS, that it shall be lawful for the said trustees or trustee for the time being, during the joint lives of the said [*gentleman*], and [*lady*], and the life of the survivor of them, with their, his, or her consent in writing, and after the decease of such survivor, at their or his discretion, to raise and apply all or any part of the then expectant portion of any child or issue, whose portions shall not then be payable under the trusts aforesaid, for his or her

OF SUMS OF MONEY AND REAL ESTATE.

and remaining one-fifth to the appointment of intended husband.

Power to trustees, with consent of intended husband and wife, and after their decease, at their own discretion, to raise the portions before they become payable.

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years, and subject thereto, to the use of the plaintiff, with remainder to the use of all his children, as tenants in common in fee. The trusts of the term of two hundred years were declared to be for raising a sum of money for paying the costs of an original suit, instituted for the purpose of establishing the will, and compelling an election by the heir at law; and for paying an annuity of fifteen pounds to each of the other three children of M. T., and also for paying the costs of the parties to that deed, incurred in respect of any suits in equity, to be instituted for the purpose of restraining the other three children of the testator from cutting and carrying away timber.

Alexander C. B. said, that it had been urged, that the subsequent settlement, in pursuance of a previous agreement, was a fraud upon the power, inasmuch as it limited the estate to the appointee for his life only, the remainder to his children, who were not objects of the power. On this point his lordship declared himself to be of a different opinion; and he relied on the cases of *Langstone* v. *Blackmore*, *Routledge* v. *Dorril*, and *White* v. *St. Barbe*, which he said were infinitely stronger than was necessary for the support of his opinion.

This case, it will be seen, also decided, that although the appointment and settlement were separate acts, the same rule was held to prevail.

If, however, neither this rule nor the rule of *cy pres* can be called to the assistance of such an appointment, it will be void both at law and in equity, and the property attempted to be appointed will go as in default of appointment.

OF SUMS OF MONEY AND REAL ESTATE.

preferment, advancement, or benefit: AND the said [*gentleman*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, that he the said [*gentleman*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, the said sum of two thousand five hundred pounds, and the interest thereof, at the days and times, and in the manner in the condition of the said recited bond or obligation, and hereinbefore mentioned, for the payment thereof respectively; *And* shall and will, from time to time, and at all times hereafter, save, defend, keep harmless and indemnified, the said capital messuage and other hereditaments, hereinafter released, or intended so to be, and the persons entitled thereto under the trusts and limitations hereinafter contained, of, from, and against the said sum of two thousand five hundred pounds, and the interest thereof, and all actions, suits, losses, claims, and demands whatsoever, in respect of, or on account of the same: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said [*gentleman*] shall pay in the said sum of two thousand five hundred pounds, or any part thereof, during his life, it shall and may be lawful to and for the said [*trustees*], and the survivor of them, his executors and administrators, upon an application to be made to them for that purpose by the said [*gentleman*], again to advance and lend him the said sum of two thousand five hundred pounds, or any part thereof, on the security of his bond or obligation and covenant, and a charge upon the said capital messuage and other hereditaments hereinafter released, similar to that hereinafter created for securing the same: AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid, and in pursuance and further performance of the said agreement, *And* in consideration of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*], to the said [*gentleman*] paid, at or before the sealing or delivery of these presents, (the receipt whereof is hereby acknowledged,) HE the said [*gentleman*] *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth*, &c. unto the said [*trustees*], their heirs and assigns, ALL, &c. Together with all ways, &c. (*All* which said premises,

Covenant by intended husband with the trustees for the payment of the 2500*l.*

and to indemnify the messuage, &c. from the same.

Proviso, that if the intended husband pay in the 2500*l.* the trustees may again advance the same on his bond, and on the security of the messuages.

Second witnessing part, whereby gentleman releases to trustees and their executors,

the parcels.

OF SUMS OF MONEY AND REAL ESTATE.

hereby granted and released, are now in the actual possession of the said [*trustees*] by virtue of a bargain and sale, &c.); *And* the reversion, &c. *And* all the estate, &c. To HAVE AND TO HOLD the said capital messuage or dwelling-house, gardens, lands, tenements, hereditaments, and all and singular other the premises hereinbefore described, and hereby granted and released, or intended so to be, with their appurtenances, *Unto* and to the use of the said [*trustees*], their heirs and assigns, upon the trusts nevertheless, and to and for the ends, intents, and purposes, hereinafter expressed and contained of and concerning the same (that is to say); *In trust* for the said [*gentleman*], his heirs and assigns, till the said intended marriage shall be solemnized, and after the solemnization thereof, *Upon* trust that they the said [*trustees*], and the survivor of them, his executors and administrators, if the said [*gentleman*] should make default in payment of the said sum of two thousand five hundred pounds, or any part thereof, at the time appointed in his said bond or obligation for the payment thereof, and according to the true intent and meaning of these presents, *Do* and shall, at such time or times, and in such manner as they or he shall think proper, by sale or mortgage, or other disposition of the said capital messuage and other hereditaments hereby granted and released, or intended so to be, or a competent part or competent parts thereof, levy and raise the sum of two thousand five hundred pounds of lawful money of Great Britain and Ireland, and all interest due for the same; *And* stand and be possessed of and interested in the same, upon and for the trusts, intents, and purposes, hereinafter expressed or contained of and concerning the same; *And* (subject to the levying and raising the said sum of two thousand five hundred pounds, and the interest thereof, as hereinbefore is mentioned), do and shall stand and be seised of the said capital messuage and other hereditaments, *In trust* for the said [*gentleman*] and his assigns, during the term of his natural life, without impeachment of waste; and immediately from and after his decease, *In trust* for the said [*lady*] and her assigns, for the term of her natural life, without impeachment of waste; *And* immediately from and after her decease, *In trust* for all and every, or such one or more exclusively of the others or other of the children of the said [*gentleman*], by the said

Habendum, to the use of the trustees,

In trust for gentleman, till marriage, and then in trust, if default be made in payment of the 2500*l.* to raise the same by sale or mortgage,

and be possessed of the same on trusts hereinafter mentioned;

and subject thereto, to be seised of the said messuage,

In trust for intended husband for life; remainder

In trust for intended wife for life; remainder

OF SUMS OF MONEY AND REAL ESTATE.

[*lady*], or of their issue born in the life-time of the said [*gentleman*] and [*lady*], or the survivor of them, of the said child or children, or any of them, at such times, and for such estate or estates, interest or interests, in such parts, shares, and proportions, and charged and chargeable with such annual and other sum or sums of money, for the benefit of some one or more of the said children, as the said [*gentleman*] shall, by any deed or writing, sealed and delivered in the presence of, and attested by two or more credible witnesses, direct, limit, or appoint; and in default of such direction, limitation, or appointment, *Then* as the said [*lady*], in case she shall survive the said [*gentleman*], shall by any deed or writing, sealed and delivered in the presence of, and attested by two or more credible witnesses, direct, limit, or appoint; and in default of any such direction, limitation, or appointment, *In trust*, for all and every the children or child of the said [*gentleman*] by the said [*lady*], and the heirs of his, her, or their body or respective bodies issuing, to be divided between or among them, if more than one, in equal shares as tenants in common; *And* on the death, or failure of issue, of any one or more of the said children, then, as well the original share or shares of the said child or children so dying, and of whom there shall be a failure as aforesaid, as the share or shares which shall accrue to him, her, or them, or his, her, or their issue, on the death or failure of issue of any other or others of them, to be *In trust* for the other or others of the said child or children, and the heirs of his, her, and their body or respective bodies; and such last mentioned children, if more than one, to take in equal shares as tenants in common; *And* on the death, or failure of issue of all the children of the said intended marriage, save one, or if there shall be but one child only of the said intended marriage, *Then* the entirety of the said messuage and other hereditaments, to be *In trust* for such one or only child, and the heirs of his or her body issuing; *And* in default of such issue, *In trust* for the right heirs of the said [*gentleman*]: (*Hotchpot proviso, see ante*, Vol. VII. *p.* 503.) PROVIDED ALWAYS that it shall and may be lawful to and for the said [*gentleman*], during his life, and after his decease, to and for the said [*lady*], during her life, in case she shall survive the said [*gentleman*], and after the decease of the survivor of them, the said [*gen-*

In trust for such children and their issue, as intended husband shall by deed appoint;

and in default thereof, as intended wife, in case she survives, shall by deed appoint;

In default thereof, In trust for the children and their heirs, as tenants in common;

and on death or failure of issue of any one or more children, the original shares and the accruing shares,

In trust for remaining children, if more than one, as tenants in common;

and on the death of all, save one,

In trust for such one;

remainder In trust for right heirs of intended husband.

Power for intended husband, and after his decease, for intended wife,

OF SUMS OF MONEY AND REAL ESTATE.

tleman] and [*lady*], to and for the said [*trustees*], and the survivor of them, his executors and administrators, during the minority of any of the children or issue of the said intended marriage, to limit or appoint, by way of demise or lease, the hereditaments hereby released, or any of them, to any person or persons, for any number of years, not exceeding twenty-one years in possession, at rack rent, such lessee or lessees executing counterparts of the leases, and thereby covenanting for the payment of the rent thereby reserved, and such leases containing a covenant for re-entry on nonpayment thereof; PROVIDED ALSO, that it shall and may be lawful for the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, with the consent in writing of the said [*gentleman*] and [*lady*] during their joint lives, and if the said [*gentleman*] shall survive the said [*lady*], then with his consent in writing, during his life, to dispose of the premises hereby released, either by way of absolute sale, or by way of exchange; AND it is hereby agreed, that the said [*trustees*], and the survivor of them, his executors and administrators, shall receive the money, arising from any sale, or to be paid for equality of exchange, and lay out the same in the purchase of freehold, leasehold, or copyhold lands, tenements, or hereditaments, and stand possessed and be seised of the lands, tenements, or hereditaments, so to be purchased, or to be received upon any such exchange, upon the subsisting trusts of the present settlement, *Yet* so that no leasehold for years, purchased in pursuance of the aforesaid trust, shall for the purpose of transmission, vest absolutely in any child of the said intended marriage, until such child shall have attained twenty-one years, or depart this life under that age, leaving issue; *But* such child shall, during such suspense of absolute vesting as aforesaid, be entitled to receive for their respective benefit, the rents, issues, and profits of the said leasehold premises; *And* it is hereby also agreed, that until such purchases shall be made, the said [*trustees*], and the survivor of them, his executors and administrators, shall lay out the money arising from such sale or sales, or to be paid for equality of exchange, in their or his names or name, upon such stocks, funds, or securities as aforesaid; and shall alter, vary, and transpose the same as hereinbefore is mentioned, of and concerning the first mentioned trust-

and after the decease of both, for trustees, to lease for 21 years.

Power to trustees, with consent of intended husband and wife, and if husband survives, with his consent, to sell and exchange.

Trustees to lay out the money received by sale or equality of exchange in lands, and to be seised of the same on the subsisting trusts of the settlement;

but no leaseholds purchased to vest till 21, or until such child die under that age, leaving issue;

but during suspense of vesting, child to be entitled to the profits.

Till such purchases, to lay money out in the funds, and pay dividends to persons who would be entitled to the rents.

OF SUMS OF MONEY AND REAL ESTATE.

monies, stocks, funds, and securities, and pay the interest, dividends, and annual produce thereof, to the persons who, if such purchases were made, would be entitled to the rents of the lands so to be purchased: (*Clause that trustees' receipts be sufficient discharges, see ante*, Vol. VII. *p.* 445.)

Provision hereby made for intended wife, in bar of dower.

PROVIDED ALSO, and it is hereby agreed &c., and the said [*lady*] *Doth* hereby COVENANT and agree, that the provision made for said [*lady*] shall be, and the said [*lady*], with the the full approbation and consent of her said father, the said [*father of lady*], *Doth* hereby accept the same, in satisfaction and bar of her dower, and of any estate, title, or interest whatsoever, to which by common law, or by custom, or otherwise, she would be entitled, in, from, or out of any freehold or copyhold messuages, lands, tenements, and hereditaments, of which during the said intended coverture, the said [*gentleman*] is, shall, or may be seised for an estate of inheritance: PROVIDED ALSO, that if either of the said trustees hereby appointed, or to be appointed as hereinafter is mentioned, or their respective heirs, executors, or administrators, shall depart this life, or refuse or decline, or become incapable to act in the trust hereby in them reposed, then and so often as it shall so happen, it shall and may be lawful to and for the said [*gentleman*] and [*lady*], and the survivor of them, and the executors and administrators of such survivor, to appoint one or more person or persons to be a trustee or trustees in the room of the trustee or trustees so dying, or refusing, or declining, or becoming incapable to act; and thereupon the said trust monies, estates, and premises, shall be vested in the new trustee or trustees solely, or jointly with the surviving or continuing trustee or trustees, as occasion shall require; and that such new trustee or trustees shall have the same powers and authorities to all intents and purposes whatsoever, as if he or they had been originally nominated a trustee or trustees in this present indenture: PROVIDED ALSO, that the trustees hereby appointed or to be appointed, shall not be answerable the one for the other of them, or for signing receipts for the sake of conformity, or for any involuntary loss, and that it shall be lawful for them to reimburse themselves their costs and expenses in discharging the trusts. (*Covenants for title by gentleman with trustees, as ante*, Vol. VII. *p.* 447—450). IN WITNESS, &c.

Short clause for change of trustees.

Clause for indemnity of trustees.

Covenants for title.

OF MORTGAGE SUMS.

MARRIAGE SETTLEMENT *of Two Sums, the One being a Mortgage Sum, and the other a Sum of Stock belonging to the Lady; the Transfer thereof being by a Separate Deed: Declaration of the Trusts thereof in the usual way, for the Benefit of the Parents and Children:* COVENANT *by Gentleman, within Three Years to Assign over a Portion of a Legacy charged on Real Estate, upon Trusts for the Benefit of Himself, Lady, and the Children of the Marriage, by reference to the former Trusts.*

THIS INDENTURE, made the day of , BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; and [*trustees*] of, &c. of the third part; (*Agreement for marriage, as post, p.* 31.) AND WHEREAS upon the treaty for the said marriage it was agreed that the sum of five thousand pounds should be assigned to the said [*trustees*] by the said [*lady*], upon and for the trusts, intents, and purposes, hereinafter mentioned; AND WHEREAS by an (*a*) indenture bearing even date with

Parties.

Agreement for marriage.

Agreement that 5000*l.* should be assigned by lady;

and that by an indenture of

(*a*) When money secured upon mortgage is made the subject of a marriage settlement, there should always be two deeds: by the one, the mortgage money and the lands should be assigned to a trustee, upon the trusts declared by the other deed, and his receipt should be made sufficient discharges. See the proper deed, under the title TRANSFER. The other deed should be as above. The mortgagor is thus kept from being implicated in the trusts of the settlement, and the private affairs of the mortgagee will not appear on his title. It sometimes happens, that a person about to be married, is entitled only to a part of the sum lent on mortgage, and that the whole security has been conveyed to another person, and a declaration of trust has been taken as to this part. In this case the whole sum and the securities should be transferred to a trustee, as to the sum to be settled, upon the trusts of the intended settlement; and as to the other part or parts, upon trust for the other mortgagee or mortgagees.

Practical direction.

OF MORTGAGE SUMS.

even date, 4000*l.* has been assigned to trustees, upon trusts to be hereby declared.

That lady is possessed of 1000*l.* stock, and agreement to transfer it to trustees.

Transfer accordingly.

That gentleman under his father's will is entitled to a portion charged on real estate, payable *in futuro*;

agreement that gentleman should covenant to assign a part thereof.

First witnessing part, whereby it is declared that trustees shall stand possessed of the sums upon the usual trusts, for the benefit of parents and children.

these presents, and made or expressed to be made between the said [*lady*] of the one part, and the said [*trustees*] of the other part; a sum of four thousand pounds, secured as in the said indenture now in recital is mentioned, has (for the considerations therein mentioned) been assigned to the said [*trustees*], upon and for the trusts, intents, and purposes, to be declared by an indenture of even date therewith (meaning this present indenture); AND WHEREAS the said [*lady*] is possessed of or entitled to the sum of one thousand pounds, three per cent. consolidated bank annuities; and it hath also been agreed that the said sum of one thousand pounds, three per cent consolidated bank annuities, should be transferred into the names of the said [*trustees*], upon and for the trusts, intents, and purposes hereinafter declared; AND WHEREAS the said sum of one thousand pounds, three per cent. consolidated bank annuities, hath been this day transferred accordingly, and the same is now standing in the names of the said [*trustees*] in the books of the governor and company of the bank of England, as they do hereby admit and acknowledge; AND WHEREAS under or by virtue of the last will and testament of [*father of gentleman*] late of, &c. the father of the said [*gentleman*], bearing date on or about the day of , the said [*gentleman*] is entitled to the sum of seven thousand pounds, charged on all the real estate of the said [*father of gentleman*], which will be payable to him the said [*gentleman*] at or about the expiration of three years from the date of these presents; AND WHEREAS it hath been also agreed, that the said [*gentleman*] should enter into the covenant hereinafter contained, to assign the sum of three thousand pounds, part of the said sum of seven thousand pounds, when he shall receive the same, to the said [*trustees*], upon and for the trusts, intents, and purposes hereinafter declared; NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the said intended marriage, It is hereby agreed and declared, that the said [*trustees*], and the survivor of them, his executors and administrators, shall stand possessed of and interested in the said several sums of four thousand pounds, and one thousand pounds three per cent. consolidated bank annuities,

OF MORTGAGE SUMS.

upon and for the trusts, intents, and purposes, hereinafter declared of and concerning the same, (that is to say); as to the said sum of one thousand pounds three per cent. consolidated bank annuities, (*In trust to continue the same upon its present security, or alter and vary the same as occasion may require;*) and as to the said sum of four thousand pounds, (*to invest and vary and stand possessed thereof upon trust for the benefit of parents and children, in the usual way, see ante,* Vol. VII. *p.* 506—510;) AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations hereinbefore mentioned, and also in consideration as well of the fortune or portion of the said [*lady*] so settled as hereinbefore is mentioned, as also of all other property to or in which the said [*lady*] is or shall be hereafter entitled or interested; HE the said [*gentleman*], for himself, his heirs, executors, administrators, and assigns (*b*), COVENANTS, promises, and agrees with and to the said [*trustees*], their executors, administrators, and assigns, that he the said [*gentleman*], his heirs, executors, or administrators, shall and will, within three years from the date of these presents, if he shall receive or be able to exercise any power over the same, assign, make over, and effectually vest the sum of three thousand pounds of lawful money of Great Britain and Ireland, part of the said sum of seven thousand pounds so charged as hereinbefore is mentioned, to and in the said [*trustees*], and the survivors and survivor of them, or the executors or administrators of such survivor, upon the trusts hereinafter declared, or as near thereto as the circumstances of the case will admit of (that is to say); *In trust* to (*invest and vary, short, by reference, see* Vol. VII. 506), and do and shall stand possessed of and interested in the said sum of three thousand pounds, and the stocks, funds, and securities in which the same shall be invested, *In trust* to pay the interest and dividends thereof to the said [*gentleman*] and

Second witnessing part, whereby gentleman, in consideration of all the property of the lady, covenants that he will, within three years, vest the sum of 3000*l.* in trustees,

upon trust to invest, and vary, and stand possessed thereof;

In trust for gentleman for life, for lady

(*b*) The best security in a case of this nature would have been an assignment of the portion of the legacy; but to this the party would not consent.

OF MORTGAGE SUMS.

for life, to be applied to the maintenance of the children;

but if no children, then for her own benefit, and after her decease, to such children as gentleman should appoint; and in default, In trust for all the children, in such manner as before declared of the lady's sums.

Agreement that children should have the same benefit in gentleman's fund as in lady's.

his assigns during his life, and if the said [*lady*] shall survive the said [*gentleman*], *In trust* to pay the interest and dividends thereof to the said [*lady*] during her life, to be applied, if there shall be any child or children of the said [*gentleman*] by the said [*lady*], wholly for his, her, or their maintenance and education and benefit; but if there shall be no such child and children, then to be applied to the use and benefit of the said [*lady*], and after the decease of the said [*lady*] (*as gentleman shall appoint, see ante,* Vol. VII. *p.* 507;) *And* in default of such appointment, *In trust* for all and every the child and children of the said [*gentleman*] by the said [*lady*], to vest at such time and times, and in such shares and proportions, as is and are hereinbefore mentioned with respect to the several sums of four thousand pounds, and one thousand pounds; and if there shall be no child (*to gentleman absolutely, see ante,* Vol. VII, *p.* 510;) AND it is hereby agreed and declared between and by the parties hereto, that all the said child and children of the said [*gentleman*] by the said [*lady*] shall have the same benefit of hotchpot and survivorship, and the said [*trustees*] and the survivor of them, and the executors, administrators, and assigns of such survivor, shall have the same powers for the maintenance, education, and advancement of all the child and children of the said [*gentleman*] by the said [*lady*], of, in, and over the share or shares, portion and portions of the child and children in the said sum of three thousand pounds, and the stocks, funds, and securities for the same, as are hereinbefore declared and given of, in, and over the share and shares, portion and portions of the said child and children, in the said sums of four thousand pounds and one thousand pounds, and the stocks, funds, and securities for the same respectively; (*Trustee clauses, as ante,* Vol. VII. *p.* 511, 512.) IN WITNESS, &c.

OF POLICY OF ASSURANCE.

MARRIAGE SETTLEMENT: *Father of Lady covenants to pay Lady's Fortune on Marriage; a Policy of Assurance is effected by the Gentleman, and the Trusts thereof are declared in favour of Gentleman, Lady, and the Children, with the usual Provisions, and Assignment of Corn Rents by Gentleman to secure the Payment thereof.*

THIS INDENTURE, made the day of , BETWEEN [*father of lady*] of, &c. of the first part; [*gentleman*] of, &c. of the second part; [*lady*] of, &c. of the third part; and [*trustees*] of, &c. of the fourth part; WHEREAS a marriage hath been agreed upon, and is shortly intended to be had and solemnized between the said [*gentleman*] and [*lady*]; AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said [*father of lady*] should pay to the said [*gentleman*] the sum of pounds, as the marriage portion or fortune with his said daughter, and should enter into the covenant hereinafter contained in regard to the same; *And* that the said (*a*) [*gentleman*] should effect

Parties.

Agreement for marriage.

Agreement that father of lady should pay to gentleman the sum of —*l.*

and that gentleman should insure his life;

(*a*) By 14 Geo. III. c. 48. s. 1, it is enacted, That no insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or on any other event wherein the person for whose use or on whose account such policy is made, shall have no interest; or by way of gaming, or wagering; and every insurance made contrary hereto shall be void.

14 Geo. 3, c. 48.

Sect. 2. It shall not be lawful to make any policy on the life of any person, or other event, without inserting in such policy the persons' names interested therein, or for whose use such policy is under-wrote.

Sect. 3. Where the insured hath interest in such life or event, no greater sum shall be recovered from the insurer, than the amount of the value of the interest of the insured therein.

Sect. 4. Nothing herein shall extend to insurances *bonâ fide* made by any person on ships, goods, or merchandizes: but such insurance shall be valid.

Who has sufficient interest under the act.

A creditor, it has long been settled, has sufficient interest in the life

OF POLICY OF ASSURANCE.

an assurance on his own life with the society for equitable assurances on lives and survivorship, in the sum of pounds, in the names of the said [*trustees*]; *And* that the said [*trustees*], and the survivor of them, his executors and administrators, should stand and be possessed of the same, and the monies to arise therefrom, upon the trusts hereinafter declared concerning the same; *And* it was further agreed, that in order to keep on foot the said assurance, the said [*gentleman*] should demise to the said [*trustees*], for the term of years hereinafter limited, the rents and yearly sums hereinafter mentioned, and should enter into the covenants hereinafter contained: AND WHEREAS in pursuance of the said agreement, by an instrument or policy of assurance, under the hands and seals of three of the directors of the society for equitable assurances on lives and survivorships, bearing date the day of , and numbered , the stocks and funds of the said society are (in consideration of the annual premium therein mentioned) made liable to the payment to the said [*trustees*], and the survivor of them, his executors and administrators, within three calendar months next after the decease of the said [*gentleman*] should be made known at the office of the said society, of the sum of pounds, and with such other sum or sums of money as should become payable by way of bonus on the said policy, under or by virtue of the provisions and regu-

and that the trustees should be possessed of the insurance;

and that to keep on foot the assurance, gentleman should demise the rents after mentioned.

That gentleman has effected a policy of assurance.

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of his debtor, to authorize him to insure it. See *Godsel* v. *Boldero*, 9 East, 71. A trustee has also a sufficient interest to support the validity of a policy, *Tidswell* v. *Angerstein*, Peake N. P. C. 151. As the interest under a policy passes with the bankrupt's other property to his assignees, *Schondler* v. *Wace*, 1 Camp. 487, if the insurance is to be effected out of the lady's property, the monies to arise from it should be settled upon trusts providing against the bankruptcy of the husband. See *ante*, Vol. VII. p. 328.

Suggestion as to settlement of monies secured by policy.

In an insurance upon the life of another, the person whose life is insured, if applied to for information, is, in giving such information, the implied agent of the party insuring, who is bound by his statements, and must suffer if they are false, although the servant of the insurance office undertakes to do all that is necessary, *Everett* v. *Desborough*, 5 Bing. 503.

lations expressed and contained in the deed of settlement, whereby the said society was established. Now THIS INDENTURE WITNESSETH, that in pursuance, and in consideration of the said intended marriage, and the settlement intended to be made by these presents on the part of the said [*gentleman*], HE the said [*father of lady*], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*gentleman*], his executors, administrators, and assigns, that he the said [*father of lady*], his heirs, executors, or administrators, shall and will, immediately after the solemnization of the said intended marriage, well and truly pay or cause to be paid the sum of pounds of lawful money of Great Britain and Ireland, as and for the portion or fortune of the said [*lady*]: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said intended marriage, and of the said sum of pounds so covenanted to be paid by the said [*father of lady*] to the said [*gentleman*] as aforesaid, It is hereby agreed and declared between and by the parties to these presents, that the said [*trustees*], and the survivor of them, his executors, administrators, and assigns, shall stand and be possessed of and interested in the said policy of assurance, and the sum of pounds assured thereby, and all other monies to be had or obtained under or by virtue of the said policy, in trust for the said [*gentleman*], his executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; and from and after the solemnization of the said intended marriage, *Upon trust*, that they the said [*trustees*], and the survivor of them, and the executors or administrators of such survivor, do and shall, when the said sum of pounds assured by the said policy, and all other monies to be had or obtained under or by virtue of the said policy, shall become due and payable, to receive and obtain payment thereof, and lay out and invest the same in their or his names or name, *And* do and shall from time to time, with the consent of the said [*lady*], during her life, and after her decease, at the discretion of the said [*trustees*], or the survivor of them, his executors and

OF POLICY OF ASSURANCE.

Testatum, whereby father of lady covenants to pay portion of lady on the solemnization of the marriage.

Second testatum, whereby it is agreed that trustees shall stand possessed of policy of assurance, and the money thereby secured.

on the receipt of the money, to invest the same;

with consent of lady,

OF POLICY OF ASSURANCE.

alter the securities, and stand possessed thereof, upon trusts for the parents and children.

Third testatum, whereby gentleman conveys

corn rents, awarded under inclosure act.

Short history of parcels.

administrators, alter, vary, or transfer the same for or into other stocks, funds, and securities of the like nature, (*and stand possessed thereof upon trust for lady for life; and then among the children as gentleman should appoint; or in default of appointment by him, as lady should appoint; and in default, amongst the children equally; and if no children, to gentleman absolutely, with the usual provisions,* *ante*, Vol. VII. *p.* 507—510): AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of pounds so covenanted to be paid by the said [*father of lady*] to the said [*gentleman*] as aforesaid, and of the sum of ten shillings of like lawful money, by the said [*trustees*] to the said [*gentleman*] paid, at or immediately before the sealing and delivery of these presents, (the receipt, &c.); HE the said [*gentleman*], with the privity and approbation of the said [*father of lady*] and [*lady*], (testified by their respectively being parties to, and sealing and delivering these presents,) *Hath* granted, bargained, sold, and demised, and by these presents *Doth* grant, bargain, sell, and demise unto the said [*trustees*], their executors, administrators, and assigns, ALL THOSE corn rents or yearly sums which, under or by virtue of the award of the commissioners of the D. Inclosure Act, are now, or hereafter shall be issuing out of the lands and hereditaments mentioned and described in the schedule thereto annexed, and payable to the rector of the parish and parish church of D. aforesaid for the time being, for and in lieu of the tithes wherewith the same lands and hereditaments were chargeable at the time when the said act was passed, which lands and hereditaments belong to the Right Honourable F. E. of G., and are situate, lying, and being in the parish of D. aforesaid, and which corn rents and yearly sums are by the said inclosure act directed to be fixed every fourteen years by the quarter sessions for the county of Oxford, according to the average price of corn in the Oxford market for the fourteen years immediately preceding, and were by the last Michaelmas quarter sessions fixed for fourteen years, commencing from Michaelmas last, and the average price of corn at which the corn rents or yearly sums were so fixed as

aforesaid was ten shillings and sixpence per bushel; To HAVE AND TO HOLD the said corn rents or yearly sums hereby bargained, sold, and demised, or intended so to be, and every part thereof respectively, unto the said [*trustees*], their executors, administrators, and assigns, for the term of ninety-nine years, to commence from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, if the said [*gentleman*] should so long continue rector of the said parish and parish church of D., upon the trusts, and for the intents and purposes hereinafter expressed and declared (that is to say); *In trust* for the said [*gentleman*], his executors, administrators, and assigns, until the said intended marriage shall be had and solemnized, and from and immediately after the solemnization thereof, *Upon trust* that the said [*trustees*], and the survivor of them, and the executors or administrators of such survivor, do and shall from time to time, with, and out of the said corn rents, or yearly sums, pay the premium payable upon or in respect of the policy by which such assurance has been effected, by the said [*gentleman*], as hereinbefore is mentioned, when and as the same premium shall from time to time become due; *And* do and shall from time to time, pay all the surplus or residue of the said corn rents or yearly sums to the said [*gentleman*], his executors, administrators, and assigns, to and for his or their own absolute use and benefit; (*Power of attorney to receive the said corn rents or yearly sums hereby bargained, sold, and demised, see ante*, Vol. VII. *p.* 600;) *And* also that he now hath in himself, good right, full power, and lawful and absolute authority to bargain, sell, and demise the said corn rents or yearly sums hereby bargained, sold, and demised, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, for the term of years, and upon the trusts, and in the manner aforesaid, and according to the true intent and meaning of these presents; and that the said corn rents or yearly sums shall and may at all times hereafter during the continuance of the said term of ninety-nine years, remain and be upon the trusts hereinafter declared concerning the same, and be received and taken when and as the same or any part thereof respectively shall from time to time become due and payable, without any in-

OF POLICY OF ASSURANCE.

Habendum for ninety-nine years.

In trust for gentleman until the marriage, and after the marriage, upon trust thereout to pay the premiums due on the policy,

and the residue to gentleman.

OF POLICY OF ASSURANCE.

terruption, claim, or demand whatsoever, of, from or by the said [*gentleman*] or any other person or persons whomsoever; *And* that, &c. (*free from incumbrances*); *And* that he the said [*gentleman*], and that all other persons or person having or claiming any estate, right, title, or interest, &c. (*for further assurance; Power to change trustees, see ante, p.* 511, 512.) IN WITNESS, &c.

OF COPYHOLDS.

MARRIAGE SETTLEMENT *of* COPYHOLDS, *whereby they are covenanted to be surrendered to the Use of Trustees, upon Trust, to raise all Fines and Fees due for the Premises, and subject thereto, upon Trust, to pay the Rents to Gentleman for his Life, and then to Lady for her Life, and after the Decease of the Survivor of them, In Trust for the first and other Sons in Tail; and in Default of such Issue, In Trust for the Daughters, as Tenants in Common in Tail, with Cross Remainders; and in Default of such Issue, In Trust for Gentleman in Fee.* COVENANT *by Gentleman, that until Surrender shall be made, he will stand seised upon the Trusts before declared. Power to raise Portions for younger Children, with other usual Provisions.*

THIS INDENTURE, made the day of , BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; and [*trustees*] of, &c. of the third part: WHEREAS a marriage is intended to be shortly had and solemnized between the said [*gentleman*] and [*lady*]; AND WHEREAS the said [*gentleman*] is seised of or well entitled to the messuages or tenements and hereditaments hereinafter described, and covenanted to be surrendered, or intended so to be, with the appurtenances, to him and his heirs, according to the custom of the manor of ;

Parties.

Recital of agreement for marriage.

Seisin of copyholds,

AND WHEREAS, upon the treaty for the said marriage, it was agreed that the messuages or tenements and hereditaments should be covenanted to be surrendered, to the uses, upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter limited, expressed, declared, and contained, of and concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said intended marriage, and also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*gentleman*] paid, at or immediately before the sealing and delivering of these presents, (the receipt whereof is hereby acknowledged), HE the said [*gentleman*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT (*a*), promise, and agree, with and to the said [*trustees*], their heirs and assigns, that he the said [*gentleman*], his heirs and assigns, shall and will, after the solemnization of the said intended marriage, at his and their own proper costs and charges in all things, when thereunto requested by the said [*trustees*], their heirs and assigns, well and effectually surrender into the hands of the lord or lords, lady or ladies, for the time being, of the manor of , or other the manor or manors whereof the said messuages or tenements and hereditaments hereinafter described, are respectively holden, according to the custom of the said manor or manors, ALL THAT, &c. (*parcels*); *And* the reversion, &c.; *And* all the estate, &c. *To the use* (*b*) of the

OF COPYHOLDS.

and agreement to settle the same.

Witnessing part, whereby gentleman covenants with trustees to surrender

parcels,

To the use of trustees,

(*a*) See other covenants to surrender, *ante*, Vol. VI. p. 317. 298. Other forms.

(*b*) In some manors, uses, entails, and remainders are permitted; and in these cases the uses should be incorporated in the surrender: but this is almost always attended with considerable expense and difficulty, because the fines on the alienation must be paid, and the stewards often refuse to incumber the rolls with trusts, provisions, and covenants. "Powers, and shifting uses," says Mr. Coventry, "the two great engines by which contingencies are provided for, and minorities protected, are inapplicable to copyholds; a settlement, therefore, of the *legal* interest of copyholds, must be of very limited operation, and generally inadequate to the purposes of family arrange- As to settlement of copyholds.

OF COPYHOLDS.

said [*trustees*], their heirs and assigns, at the will of the lord, according to the custom of the said manor, and under and subject to the rents, duties, suits, and services therefore due, and of right accustomed to be paid, done, and performed, *Upon the trusts*, nevertheless, and to the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed, declared, and contained, of and concerning the same, (that is to say); *Upon trust*, in the first place, by and out of the rents, issues, and profits of the said messuages or tenements and hereditaments, or by such other ways and means as to the said [*trustees*], and the survivor of them, his heirs and assigns, shall seem meet and reasonable, to levy, raise, and pay unto and for themselves and himself, all and every the fines, fees, and expenses, and all other customary outgoings which he and they respectively shall or may bear, sustain, or pay, or be liable to, by reason or in respect of their surrender, admission, or otherwise, in respect of the said messuages or tenements and hereditaments, and all other costs, charges, and expenses which he or they respectively shall or may bear, sustain, or be put unto, in the execution of the trusts hereby in them or him reposed; *And* subject thereto, *Upon trust* (*c*) that they the said [*trustees*], and the survivor of them, his heirs and assigns, do and shall pay to, or otherwise permit and suffer the said [*gentleman*] and his assigns to receive and take the rents, issues, and profits of the said messuages or tenements and hereditaments hereby covenanted to be surrendered, or intended so to be, for and during the term of his natural life; *And* from and after the decease of the

Upon the trusts following;

Upon trust to raise all fines and fees due in respect of the said premises,

and subject thereto to pay the rents to gentleman for life;

and after his decease, to pay the rents to lady for her life;

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ment." 2 Cov. Watk. Cop. 307. Marriage settlements of copyholds are therefore generally effected by a covenant to surrender to trustees, upon trusts effecting the settlement, which are, of course, merely limitations of the equitable estate.

By this mode no fine is payable, for in general no surrender is made. A right in equity is given to the objects of the settlement to call for an actual surrender, but the lord cannot insist on such a surrender being made.

Legal estate to gentleman.

(*c*) A legal estate for life is sometimes limited to the gentleman but it seems better that all the estates should be equitable.

said [*gentleman*], *Upon trust*, to pay to, or otherwise permit and suffer the said [*lady*] and her assigns to receive and take the rents, issues, and profits of the said hereditaments, for and during the term of her natural life; *And* from and after the decease of the survivor of them the said [*gentleman*] and [*lady*], *Upon trust* for the first son of the said [*gentleman*] by the said [*lady*], and the heirs of the body of such first son; and in default of such issue, *In trust* for the second and all and every other son and sons of the said [*gentleman*] by the said [*lady*], severally and successively in remainder, one after another, as they shall be in seniority of age and priority of birth, and of the several and respective heirs of the body of all and every such son and sons lawfully issuing, the eldest and elder of such sons, and the heirs of his body, to take and be preferred before the youngest and younger of such sons, and the heirs of his body; *And* in default of such issue, *In trust* for all and every the daughter and daughters of the body of the said [*lady*], by the said [*gentleman*] to be begotten, equally to be divided between and amongst them, share and share alike, as tenants in common, and of the several and respective heirs of the body and bodies of all and every such daughter and daughters lawfully issuing; *And* on failure of the issue of any one or more of the daughter or daughters of the said intended marriage, (in case there shall be more than one such daughter) then as well the original part or share of the same daughter or daughters of and in the said messuages or tenements and hereditaments hereby covenanted to be surrendered, or intended so to be, with the appurtenances, under and by virtue of the limitations lastly hereinbefore contained, as also the part and share, or several and respective parts and shares, which shall belong to the same daughter or daughters respectively, or her or their issue, by virtue of this present provision of cross limitations, *In trust* for the other or others of the said daughter or daughters of the said intended marriage, to be equally divided between or amongst them, if more than one, share and share alike, as tenants in common, and the heirs of the body and several and respective bodies of the same daughter or daughters respectively, lawfully issuing; *And*

and after the decease of the survivor, upon trust for the first son of the marriage in tail,

and in default of such issue, to the second and other sons in tail,

and in default of such issue, In trust for the daughters as tenants in tail in common, with cross remainders;

and in default of such issue, In trust for the

OF COPYHOLDS.

gentleman in fee.

on failure of the issue of all the said daughters, *In trust* for the said [*gentleman*], his heirs and assigns for ever; AND the said(*d*) [*gentleman*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, to and with the said [*trustees*], their heirs and assigns, that from and immediately after the solemnization of the said intended marriage, and until the said surrender or surrenders, so covenanted to be made as aforesaid, shall be made and perfected, HE the said [*gentleman*], and his heirs, shall stand and be seised and possessed of the said messuages or tenements and hereditaments, hereby covenanted to be surrendered, or intended so to be, with the appurtenances, upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, which are hereinbefore and hereinafter limited, expressed, declared, and contained, of and concerning the same: PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties hereto, that in case there shall be any child or children of the said intended marriage, other than and besides an eldest son, who shall for the time being be entitled to the said messuages or tenements and hereditaments, under and by virtue of the trusts and limitations hereinbefore declared and contained, it shall and may be lawful to and for the said [*trustees*], and the survivor of them, his heirs and assigns, either in the life-time of the said [*gentleman*] and [*lady*], or of the survivor of them, but in that case, with their, his, or her consent in writing, or after the decease of such survivor, then in his and their own discretion, by sale or mortgage of all or a competent part of the said messuages or tenements and hereditaments, or by such other ways and means as he or they respectively shall think fit, and the customs of the manor will allow, levy and raise for the portion or portions of such child or children, (not being an eldest or only son, entitled as aforesaid) the sum or sums of money hereinafter mentioned (that is to say); if there shall be but one such child,

Covenant by gentleman, that until surrender shall be made, he will stand possessed of the premises, upon the trusts hereinbefore declared.

Proviso, that if there shall be any younger children of the marriage, power to trustees to raise portions for younger children.

If but one child, the sum of —*l.*

Necessity of covenant.

(*d*) As the actual surrender is generally delayed a considerable time on a marriage settlement, this covenant, although generally useless, should be inserted.

(not being an eldest or only son, entitled as aforesaid,) the sum of pounds of lawful money of Great Britain and Ireland, as and for the portion of such one child, and to be paid and payable to, and to become vested in the same child, at or upon such age, day, or time, and with such restrictions and provisions, as the said [*gentleman*] and [*lady*], or the survivor of them, by any deed or writing, with or without power of revocation and new appointment, to be sealed and delivered by them, him, or her respectively, in the presence of and attested by two or more credible witnesses, or by the last will and testament in writing of such survivor, or any codicil or codicils thereto, to be by such survivor signed and published in the presence of and attested by two or more credible witnesses, shall direct or appoint; *And* in default of such direction or appointment, to be an interest vested or interests vested in such child, being a younger son, at his age of twenty-one years, or being a daughter, at her age of twenty-one years, or day of marriage, whichever shall first happen; and to be paid to him or her as soon after such age or time as conveniently may or can be, if the same shall happen after the decease of the survivor of them the said [*gentleman*] and [*lady*], his intended wife; but if the same shall happen in the life-time of the said [*gentleman*] and [*lady*], or the survivor of them, then the said portion shall be paid immediately after the decease of the survivor of them the said [*gentleman*] and [*lady*], unless they, or the survivor of them respectively, shall signify their, his, or her consent in writing, under their, his, or her respective hands and seals, that the same shall be raised and paid in the life-time of the said [*gentleman*] and [*lady*], or the survivor of them; *And* if there shall be two or more such children, (not being an eldest or only son, entitled as aforesaid,) then the sum of pounds of like lawful money as aforesaid, for the portions of such two or more children, the said sum of pounds to be divided between or amongst such children, not being an eldest or only son entitled as aforesaid, in such parts, shares, and proportions, and to vest in and be paid to such children respectively, at or upon such ages, days, or times, and to be subject to such charges, provisoes, and

to be paid in such manner as parents or survivor shall appoint;

and in default of appointment, to be vested at twenty-one or marriage;

and if there shall be two or more such children, the sum of —*l.* to be paid in such manner as gentleman and lady, or the survivor, shall appoint;

OF COPYHOLDS.

limitations over for the benefit of some or one of the said children, and in such manner, as the said [*gentleman*] and [*lady*], or the survivor of them, by any deed or deeds, instrument or instruments in writing, with or without powers of revocation and new appointment, to be by them, or the survivor of them, sealed and delivered in the presence of, and attested by, two or more credible witnesses, or by the last will and testament of such survivor, or any codicil or codicils thereto, to be signed and published by him or her, in the presence of, and attested by two or more credible witnesses, shall direct or appoint; *And* in default of such direction or appointment, to be divided between or amongst such children, (not being an eldest or only son entitled as aforesaid,) share and share alike, the share or respective shares of such of the same children as shall be a son or sons, to be a vested interest in him or them respectively, at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters, to become a vested interest or vested interests in her or them respectively, at her or their age or respective ages of twenty-one years, or on the day or respective days of her or their marriage or respective marriages, whichever shall first happen, and to be paid and payable as soon after the same ages, days, or times, as conveniently may or can be, in case the same shall happen after the decease of the survivor of them, the said [*gentleman*] and [*lady*]; but in case the same shall respectively happen in the lifetime of the said [*gentleman*] and [*lady*], or the survivor of them, then the same portion respectively shall be paid immediately after the decease of the survivor of them the said [*gentleman*] and [*lady*], unless he or she respectively shall signify their consent as aforesaid, that the same portions respectively, or part thereof, shall be raised and paid in the lifetime of the said [*gentleman*] and [*lady*], or the survivor of them: (*Proviso for hotchpot, as ante*, Vol. VII. *p.* 419;) PROVIDED ALSO, and it is hereby declared and agreed by and between the said parties hereto, that it shall and may be lawful to and for the said [*trustees*], and the survivor of them, his heirs and assigns, and he and they is and are hereby authorized

and in default of appointment, to be vested at twenty-one or marriage,

Provision for the maintenance of children out of the rents.

and required, after the decease of the survivor of the said [*gentleman*] and [*lady*], in the mean time and until the portion or portions hereby intended for the said child and children shall respectively become due or payable as aforesaid, by and out of the annual rents and profits of the said messuages or tenements and hereditaments hereby covenanted to be surrendered, or intended so to be, levy and raise for the maintenance and education of such child or children, (not being an eldest or only son entitled as aforesaid), such sum or sums of money, not exceeding in the whole the sum of · pounds in any one year, and pay and apply the same in or towards the maintenance, education, and support of such child or children accordingly, as they the said [*trustees*] and the survivor of them, his heirs and assigns, in his or their discretion shall think fit; *And* also levy and raise, by the ways and means aforesaid, or by sale or mortgage of a competent part of the said messuages or tenements and hereditaments, or by any other ways and means, and either in the life-time of the said [*gentleman*] and [*lady*], or the survivor of them, or after the decease of such survivor, but if in the life-time of the said [*gentleman*] and [*lady*], or the survivor of them, then with their, his, or her consent in writing, any sum or sums of money, not exceeding one half of his or their then presumptive portion or portions, and pay and apply the monies so to be raised for the purpose of placing out such younger son or sons, for whom, or in part of whose then presumptive portion or portions such sum or sums of money shall be raised, in or to any business, profession, or employment, or otherwise for his or their benefit or advancement in the world, notwithstanding his or their portion or portions shall not then have become payable as aforesaid: PROVIDED ALSO, and it is hereby declared and agreed by and between the parties hereto, that no sale or mortgage of the said messuages or tenements and hereditaments hereby covenanted to be surrendered, or intended so to be, shall be made for raising such portion or portions as aforesaid, until some one or more of the said portions shall become payable under and by virtue of the trusts and powers hereinbefore declared, unless with the consent of the said [*gentleman*] and [*lady*], or the survivor of them, testified

Provision for the advancement of the sons out of the rents.

Proviso that there shall be no sale until a portion shall become payable.

OF COPYHOLDS.

as aforesaid, or unless the same shall be made for the purpose of raising any sum or sums of money for the advancement of any younger son or sons, pursuant to the power or authority for that purpose lastly hereinbefore contained; (*Accumulation clause, as ante*, Vol. VII. *p.* 410, 411;) PROVIDED ALSO, and it is hereby further declared and agreed by and between the said parties hereto, that it shall and may be lawful to and for the said [*trustees*], and the survivor of them, his heirs and assigns, during the life of the said [*gentleman*], with his consent in writing, and after his decease, with the consent in writing of the [*lady*], and after the decease of the survivor of them, then in his and their own discretion, during the minority of any child or children of the said [*gentleman*] by the said [*lady*], who shall be entitled to an estate tail in the said messuages or tenements and hereditaments hereby covenanted to be surrendered, or intended so to be, to demise or lease, with the license of the lord of the said manor, or otherwise, as the customs of the said manor shall require, all or any part of the said messuages or tenements and hereditaments hereby covenanted to be surrendered, or intended so to be, with the appurtenances, to any person or persons, for any term or number of years not exceeding fourteen years, to take effect in possession, and not in reversion, and so as in every such lease there be reserved the best and most improved yearly rent or rents that can or may be reasonably had or gotten for the same, without taking any premium or foregift for the making thereof, and so as every such lease shall contain a condition of re-entry for the non-payment of the rent or rents thereby reserved, and so as the person or persons respectively to whom such demise or lease shall be made, shall execute a counterpart or counterparts of the same lease or leases, and shall not be made dispunishable for waste by any words in such lease or leases to be contained; (*Power to change trustees, as ante*, Vol. VII. *p.* 446, 447. *Covenants for title, as ante*, Vol. VI. 299—303) (*e*). IN WITNESS, &c.

Power to trustees, during the life of gentleman with his consent, and after his decease, with consent of lady, and after their decease at their discretion, during minorities, to lease, with the assent of lord, for fourteen years.

How covenant to surrender

(*e*) Here we may also allude to the manner in which a covenant to surrender copyholds will be carried into execution. It would seem

OF LEASEHOLDS.

MARRIAGE SETTLEMENT *of Renewable* LEASEHOLDS, *whereby they are Assigned to Trustees upon Trust to Renew the Leases, and stand possessed thereof, upon Trusts for Gentleman, Lady, and the Children of the Marriage: Power to Lease for Twenty-one Years; Covenants for Title of Leaseholds, and Trustee Clauses; with* VARIATION *for the Leaseholds being held for* LIVES, *and Trusts for Renewal thereof, and for Insurance of the Lives of the* Cestuis que Vie.

THIS INDENTURE, made the day of , BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; and [*trustees*] of, &c. of the third part: WHEREAS by an indenture of lease, bearing date on or about the day of , and made, or expressed to be made, between [*lessor*] of the one part, and [*gentleman*] of the other part; the messuages or tenements, and premises therein and hereinafter mentioned, with the appurtenances, were for the considerations therein mentioned, granted and demised

Recital of lease, with covenant for renewal.

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that a covenant to surrender upon certain specified trusts, would create a trust *executed*, and not a trust executory. See *Jervoise* v. *Duke of Northumberland*, 1 J. & W. 574. But if the trusts were not defined, and merely alluded to generally, *executory* trusts only would be created: and in the execution of the covenant, the rules as to such trusts would be called into operation. See *Jones* v. *Langton*, 1 Eq. Ca. Ab. 392; *Streatfield* v. *Streatfield*, Ca. temp. Talb. 176; *Peake* v. *Penlington*, 2 Ves. and B. 311; 2 Cov. Watk. Cop. 308; which are the same as those before mentioned with respect to marriage articles. See *ante*, p. 314, *et seq.* And a covenant to surrender copyholds, like all other covenants, will be modelled in equity so as substantially to effect the intentions of the parties. See *Eaton* v. *Lyon*, 3 Ves. 693.

copyholds will be carried into execution.

OF LEASEHOLDS.

by the said [*lessor*] to the said [*gentleman*], for the term of years, at, under, and subject to the payment of the rent, and the performance of the covenants and agreements therein reserved and contained; *And* in the said lease was contained a covenant from the said [*lessor*], that he would from time to time, at the request of the said [*gentleman*], his executors, administrators, and assigns, renew the said lease as therein mentioned; AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said [*gentleman*] and the said [*lady*]; AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said messuages or tenements, hereditaments, and premises hereinafter particularly described, and intended to be hereby assigned, with the appurtenances, should be assigned upon the trusts, and under and subject to the powers, provisoes, declarations, and agreements hereinafter expressed of and concerning the same: Now THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, and also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*gentleman*] paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HE the said [*gentleman*], *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, transfer, and set over unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT, &c. (*parcels*), *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, and all and singular other the premises hereby assigned, or intended so to be, with their and every of their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, from henceforth for and during all the residue and remainder which is now to come and unexpired of the said term of years, created therein as aforesaid, at, under, and subject to the payment of the rent, and to the observance and performance of the covenants, conditions, and agreements, in and by the said recited indenture of

Agreement for marriage,

and to settle leaseholds.

Testatum, whereby gentleman assigns

parcels.

Habendum to the trustees, upon the trusts hereinafter contained (that is to say);

OF LEASEHOLDS.

lease reserved and contained, and which from henceforth, on the tenant or lessee's part, ought to be paid, observed, and performed; but nevertheless upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed and declared of and concerning the same, (that is to say); until the said intended marriage shall be had and solemnized, *Upon trust* for the said [*gentleman*], his executors, administrators, and assigns; and from and immediately after the solemnization thereof, *Upon trust* that they the said [*trustees*] do and shall, with and out of the rents and profits of the said messuages or tenements and premises, pay the rents reserved in or by the said indenture of lease, and subject thereto (*a*), do and

until the marriage, Upon trust for gentleman, and after the marriage, Upon trust to pay the rents, and renew the lease, and raise sufficient money for such purposes;

(*a*) If the leaseholds are held for lives, the following trusts may be inserted:

LEASEHOLDS FOR LIVES.

"*And upon this further trust*, that the said [*trustees*], and the survivor of them, his executors, administrators, and assigns, do and shall from time to time use his and their utmost endeavours to procure renewals of the subsisting leases of the said messuages or tenements and premises hereby assigned, or intended so to be, so that the same may be held for three lives at least, or for twenty-one years absolute; *And* for the purposes aforesaid, do and shall out of the rents and profits of the said messuages or tenements and premises, effect and keep on foot assurances on the lives of the respective *cestuis que vie* named in such of the said subsisting leases as shall be held for lives or years determinable on lives, or on the lives of such of the *cestuis que vie* as the said [*trustees*], or the survivor of them, his executors or administrators, shall deem it advisable to effect an assurance, for such sum or sums as in the opinion of the said [*trustees*], or the survivor of them, his executors or administrators, shall be sufficient to enable them or him, whenever such life or lives shall drop or fall in, to effect a renewal of the subsisting lease in which such life shall have been named a *cestui que vie;* and do and shall apply the sums or sum from time to time to be received on the drop-

Trusts for the renewal thereof.

OF LEASEHOLDS.

shall renew the said lease from time to time, as often as occasion shall require, and do and shall make such surrenders of the same as shall be requisite for that purpose, and by and out of the said rents and profits, or by mortgage of the said premises, or a competent part thereof, raise so much money as shall be sufficient for paying the fines and other necessary charges of such renewals, and subject thereto, do and shall stand possessed (*b*) of the

and subject thereto, stand possessed

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ping or falling of any such life, in effecting a renewal of the subsisting lease in which such life shall have been named a *cestui que vie,* or out of the rents and profits thereof in the mean time, or by mortgage thereof, or of any part thereof, levy and raise such sums of money as shall be sufficient to effect the renewal of any of the subsisting leases of the said premises, when and as often as a renewal shall be advisable or necessary ; and when, from the effecting no assurance, or from the insufficiency of the money arising from any such assurance as aforesaid, or from any other cause whatsoever, there shall be no other funds, or insufficient funds for the purposes aforesaid, do and shall apply the sums and sum so to be raised, in effecting such renewal or renewals accordingly; and for the purposes aforesaid, the said [*trustees*], and the survivor of them, his executors or administrators and assigns, do and shall, from time to time, surrender the subsisting lease or leases of the said messuages or tenements and premises, and accept new leases thereof; *And* do and shall execute all such other acts and deeds as shall be necessary for the purposes aforesaid; AND it is hereby declared between and by the parties hereto, that (subject to the trusts hereinbefore declared) the said [*trustees*], or the survivor of them, his executors, administrators, and assigns, shall stand and be possessed of the said leasehold messuages or tenements and premises, for and during the terms for which the same shall be respectively held, and the trusts of renewal hereinbefore contained," (*for gentleman, as above*).

Trustees renew for the benefit of *cestuis que trust.*

(*b*) It has been seen in another place, Vol. VI. 356 *et seq.* that it is a general rule in a court of equity, that no trustee can purchase the trust property; and in conformity to the same principle, it has been

said premises, *In trust* for the said [*gentleman*] and his assigns, and to permit him and them to receive and take the rents, issues, and profits thereof, during the residue of the said term of years, if the said [*gentleman*] shall so long live, to and for his and their use and benefit; *And* from and after the decease of the said [*gentleman*], during the continuance of the said term, *In trust* to permit the said [*lady*], if she shall survive the said [*gentleman*], and her assigns, to receive and take the rents, issues, and profits thereof, during the residue of the said term of years, if she the said [*lady*] shall so long live; *And* from and after the decease of the survivor of the said [*gentleman*] and [*lady*], *Upon trust* that they the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall assign and assure the said messuages or tenements, hereditaments, and premises, for all the residue of the said term of years, unto or for the benefit of all and every, or such one or more exclusively of the other or

thereof upon trust for gentleman for life,

and after his decease, in trust for lady;

and after the decease of the survivor, upon trust for the benefit of the children of the marriage, as parents shall appoint;

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held repeatedly, that if a trustee renews a lease in his own name, it will be decreed to be in trust for the *cestui que trust*; and in one case, where an infant was the *cestui que trust*, although all his friends being consulted, they refused to renew the lease, and the trustee afterwards renewed in his own name, yet it was held to be in trust for the infant. *Keech* v. *Sandford*, Sel. Cha. Ca. 61. And see *Lesley's case*, 2 Freem. 52.

So, where there is a tenant-right, the court will not permit a trustee or executor to renew for his own benefit; *Holt* v. *Holt*, 1 Cha. Ca. 190; *Raw* v. *Chichester*, 1 Bro. C. C. 198 n.; *Pickering* v. *Vowles*, 1 Bro. C. C. 197; And see *Lucken* v. *Rushworth*, Finch. 392.

In all these cases, however, there was either an express direction to renew, or a covenant for renewal, by the lessor, contained in the lease, or a tenant-right of renewal. However, it is established by subsequent cases, that although there are none of these, yet the same principle will prevail.

Thus, in the case of *Moody* v. *Mathews*, 7 Ves. 174, where there was a grant of an annuity for the life of the grantee, out of tithes leased for years, with a covenant for further assurance; the lessee afterwards renewed the lease, married, and died. Her husband administered, and renewed the lease with his own money: and *Sir William Grant*, M. R., held that the annuity was a charge upon the renewed term

OF LEASEHOLDS.

others of the children or child of the said [*gentleman*] by the said [*lady*], at such ages, days, or times, for such estate or estates, interest or interests, and if more than one, in such parts, shares, and proportions, and either absolutely or conditionally, and subject to such charges, conditions, limitations over, and restrictions to or in favor of the other or others of the said children, as the said [*gentleman*] and [*lady*], during their joint lives, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, shall from time to time jointly direct, limit, or appoint; *And* in default of such direction, limitation, or appointment, and so far as any such direction, limitation, or appointment shall not extend, then *Upon trust* that they the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall assign,

and in default of appointment,

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generally, and that the grantee was not bound to contribute to the expense of renewal.

Thus also in *James* v. *Dean*, 11 Ves. 383, in which there was a bequest of leaseholds for years determinable upon lives, for life, remainder over, for all the residue of the testator's term and interest to come therein at his decease. The term expired in the life of the testator, who continued to hold, and paid half a year's rent before his death, as tenant by the year. Upon the general words in the will unrestrained, comprising the interest from year to year, and the intention upon the whole will, a subsequent lease, obtained by the executrix, the widow and tenant for life under the will, was held subject to the uses of the will, as the residue of the term at his death, if any, however short, would have been; and *Lord Eldon*, in this case, laid it down, that an executor to a tenant by sufferance or at will, obtaining a larger interest, is a trustee for the residuary legatee; and that an entering from year to year is transmissible to representatives beneficially, or as trustees; all which opinions were deliberately confirmed by his Lordship on a re-hearing of the case, 15 Ves. 236; although he admitted, that if the testator had bequeathed all his interest in the lease, and had then renewed it, the bequest would have been revoked, if it appeared to be the will of the testator. See *Hone* v. *Medcraft*, 1 B. C. C. 260; *Marwood* v. *Turner*, 3 P. Wms. 163; *Colegrave* v. *Munby*, 6 Mad. 72.

OF LEASEHOLDS.

and assure the said messuages or tenements and premises, for all the residue of the term of years, which shall be then to come therein, unto all and every the children or child of the said [*gentleman*] by the said [*lady*], and if more than one, in equal shares, as tenants in common, and to his, her, and their respective executors, administrators, and assigns, when and as the said child or children, being a son or sons, shall respectively attain the age of twenty-one years, or being a daughter or daughters, shall respectively attain that age, or marry before that age; *And* if there shall be no child or children of the said [*gentleman*] by the said [*lady*], who shall become entitled to the said messuages or tenements and premises hereby assigned, or intended so to be, under the trusts hereinbefore declared concerning the same; *Then* after the decease of the survivor of them the said [*gentleman*] and [*lady*], and such failure of issue as aforesaid, *Upon trust* that they the said [*trustees*], and the survivor of them, and the executors, administrators, and as-

In trust for all the children of the marriage, if sons, at twenty one, and if daughters at twenty-one or marriage:

and if there shall be no child of the marriage,

upon trust for the gentleman absolutely.

The question now discussed came also under consideration in the case of *Randall* v. *Russell*, 3 Meriv. 190; where a testator being seised in fee of a moiety of an estate at L., and in possession of the other moiety as tenant from year to year to St. J. College, gave to his wife *durante viduitate* all that his messuage or tenement, with the farm and lands at L., and all his estate and interest therein, she paying the rent, &c.; and after her death or marriage, over. The widow, after his death, obtains a new lease. *Sir William Grant*, M. R., said, "It is made a question whether the renewed lease is subject to the trusts of the will, or the absolute property of the widow. On that point, however, I do not see how any doubt can be entertained. According to the case of *James* v. *Dean*, the testator had a devisable interest in the premises, and the new lease became subject to the same trusts on which that interest was devised. It was attempted to take a distinction in this respect between a renewal by a tenant for life, and a renewal by a trustee or executor. But that the principle of what is commonly called the *Romford Market case*, Sel. Ca. Cha. 61, applies to a tenant for life, as well as to a trustee or executor, was determined in *Foster* v. *Marriott*, Ambl. 668, and *Rowe* v. *Chichester*, Amb. 715. 1 Bro. C. C. 198. And see *Owen* v. *Williams*, Amb. 734. 1 Bro. C. C. 199 n. In *Pickering* v. *Vowles*, Lord Thurlow takes the point to be settled;" See also *Owen* v. *Williams*, Ambl. 736; *Winslow* v. *Tyghe*, 2 Ba. & Be. 196.

So a lease obtained by a stranger, interfering with the assets, and

OF LEASEHOLDS.

signs of such survivor, do and shall assign and assure the said messuages or tenements and premises, with the appurtenances, unto the said [*gentleman*], his executors, administrators, and assigns, for his and their absolute use and benefit; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that it shall and may be lawful to and for the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, at any time or times hereafter, at the request and by the direction of the said [*gentleman*] and [*lady*], during their joint lives, and after the death of either of them, then at the request, and by the direction of the survivor of them, and after the decease of such survivor, at their or his discretion, by any indenture or indentures, either referring or not referring to this present power, to be sealed and delivered by him, her, or them respectively, in the presence of, and attested by two or more credible witnesses, to limit or appoint, by way of demise or lease, all or any

Power to the trustees, at the request of gentleman and lady, and after the death of the survivor, at their discretion, to lease for twenty-one years.

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compelling the surrender by executors of a leasehold interest, bequeathed to minors, will be subject to the trusts of the former lease; *Mulvany* v. *Dillon*, 1 Ba. & Be. 409.

So in *Parker* v. *Brook*, 9 Ves. 583, where there was a bequest of certain leasehold premises to testator's daughter, for her life, if the term should last so long, for her separate use; and after her decease, to her children equally, their executors, &c. during all the remainder of the estate, term, or terms therein; the husband of the daughter obtained reversionary leases; and this was held to be subject to the trusts of the will, even against a purchaser with notice.

So also where one partner renews a lease, it will be held to be subject to the trusts of the partnership, *Featherstonhaugh* v. *Fenwick*, 17 Ves. 298.

In the case of *Bennett* v. *Bennett*, in the Vice Chancellor's court, 10 November, 1829, a leasehold term, without any right of renewal, was bequeathed to John Fielder, in trust for six legatees, one of whom was executor, and another an infant. The parties agreed that a renewal should be obtained, for the benefit of all parties, and that the legatee, who was executor, and the other legatee, should go to Wokingham to renew the lease. Notwithstanding this agreement, the executor went alone to Wokingham, and renewed the lease in his own name, alleging that the renewal was refused to the other *cestuis que trust*. On the

OF LEASEHOLDS.

part or parts of the said messuages or tenements, and premises, hereby assigned, or intended so to be, with their rights, members, and appurtenances, to any person or persons, for any term of years, not exceeding twenty-one years, to take effect in possession, and not in reversion, or by way of future interest, so as there shall be reserved in every such limitation or appointment, by way of demise or lease, the best or most improved yearly rent that can be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or anything in the nature thereof; and so that the lessee therein named, do thereby covenant for the due payment of the rent or rents thereby reserved; and so that there be contained in every such limitation or appointment, a clause in the nature of a condition of re-entry on nonpayment of the rent thereby reserved, by the space of twenty-one days next after the same shall become due; and so as the lessee therein named, do execute a counterpart thereof, and be not, by any clause or words, exempted from punishment for committing waste, anything hereinbefore contained to the contrary thereof in anywise notwithstanding; AND the said [*gentleman*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, *That* for and notwithstanding any act, deed, matter, or thing whatsoever,

Covenant by gentleman with trustees, that lease is good;

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case coming on for hearing, no counsel appeared for the defendant, the executor, and a decree was taken with full costs against him.

And see on this subject, *Pierson* v. *Shore*, 1 Atk. 479. Sand. edit.; *Edwards* v. *Lewis*, 3 Atk. 538; *Killeek* v. *Flexney*, 4 B. C. C. 161. 4 Bac. Ab. 222. ed. Gwill.; *Collett* v. *Hooper*, 13 Ves. 255.

If there is a covenant to assign leaseholds to trustees, in trust for such person or persons, and for such or the like ends, intents, and purposes, as were thereinbefore mentioned of and concerning the said freehold messuages, &c. so far as the law, &c. would permit; *Lord Rosslyn* thought that the settlement should be so framed, that no person being tenant in tail by purchase of the freeholds should be entitled to the leaseholds until he attain twenty-one, or die under that age, leaving issue inheritable to the entail, *Duke of Newcastle* v. *Lincoln*, 3 Ves. 387. 12 Ves. 218. S. C.; in which case the whole subject is very fully discussed.

OF LEASEHOLDS.

by him the said [*gentleman*] made, done, committed, executed, or knowingly or willingly suffered to the contrary, the said hereinbefore recited indenture of lease is, at the time of the sealing and delivering of these presents, a good and effectual lease and demise in the law, and not forfeited, surrendered, assigned, or become void or voidable, and that the rents, covenants, conditions, and agreements, therein reserved and contained, have on the tenants' or lessees' part been duly observed and performed to the day of the date of these presents; *And* also that he the said [*gentleman*] hath good right to assign and make over the said messuages or tenements and premises, hereby assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, or assigns, upon the trusts and in the manner hereinbefore mentioned, according to the true intent and meaning of these presents; *And* that the said messuages or tenements and premises, hereby assigned, or intended so to be, with their appurtenances, shall and may, from time to time, and at all times hereafter, remain, continue, and be upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinbefore declared and contained of and concerning the same; *And* be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, received and taken, without, &c. (*for quiet enjoyment, free from incumbrances, and for further assurance, see* Vol. VII. p. 448—450.) IN WITNESS, &c.

and that the rents have been paid, and the covenants performed;

and that he hath good right to assign the premises;

and that the premises shall be held upon the trusts.

MARRIAGE SETTLEMENT, *whereby Lady assigns a* SHARE *in a Sum of Money, upon Trust, for the Benefit of Herself, Gentleman, and the Children of the Marriage; Second Witnessing Part, whereby* MONIES *secured by* POLICY, *are assigned upon the same Trusts, by reference to the Trusts first declared.*

OF SHARE IN MONIES, AND MONEY SECURED BY POLICY.

THIS INDENTURE, made the day of , BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c., of the second part; and [*trustees*] of, &c., of the third part: (*Recite settlement, whereby lady is entitled to a certain share in the sum of pounds, and to monies secured by a policy of assurance, on the life of her father, in which settlement are contained provisions for keeping it on foot; agreement for marriage, as ante, p.* 1;) AND WHEREAS, on the treaty for the said marriage, it was agreed, that the said shares of the said [*lady*], in the said sum of pounds, and in the monies secured by the said policy of assurance, should be assigned to the said [*trustees*], their executors, administrators, and assigns, upon the trusts, and for the intents and purposes hereinafter mentioned; (*Witnessing part, whereby in consideration of ten shillings, paid by trustees to lady, she assigns her share in the sum of pounds to trustees, as ante, p.* 10. 11), *In trust* for the said [*lady*], until the said intended marriage shall be solemnized, and after the solemnization thereof, *Upon trust* (*to invest and vary, as ante, p.* 2, 3), and during the joint lives of the said [*gentleman*] and [*lady*], pay, apply, and dispose of the interest, dividends, and annual produce thereof, to such person, &c. (*for separate use of lady, as ante,* Vol. VII. *p.* 514), and after the decease of such one of them, the said [*gentleman*] and [*lady*], as shall first happen to die, *Upon trust* that the trustees or trustee for the time being, do and shall pay the said interest, dividends, and annual produce of the said trust-monies,

Parties.

Recitals.

Testatum, whereby share is assigned to trustees,

In trust for lady till marriage, and after marriage, for separate use of lady;

and after decease of survivor, upon trust to pay the interest to survivor of them the gentleman and lady;

OF SHARE IN MONIES, AND MONEY SECURED BY POLICY.

stocks, funds, and securities, to, or permit the same to be received by, the survivor of them the said [*gentleman*] and [*lady*], or his or her assigns, during his or her life, and after the decease of such survivor, upon trust to assign the said trust monies unto, and between, and amongst the children or child of the said [*gentleman*], by the said [*lady*], their, his, or her, respective executors, administrators, and assigns, and if more than one, in equal shares, as tenants in common ; (*Survivorship and accumulation, as in* Vol. VII, *p.* 572. 574); *And* if no child, as the said [*lady*] (*shall appoint, and in default of appointment, according to the statute of distributions,* Vol. VII. 515); PROVIDED ALWAYS, that after the decease of the said [*gentleman*] and [*lady*], and during such time as their children, or any of them, shall, being a son or sons under the age of twenty-one years, or being a daughter or daughters, under that age and unmarried, the said trustees or trustee for the time being, shall receive the share to which each such child shall for the time being be entitled as aforesaid, of and in the part, share, and proportion, hereby assigned, or intended so to be, and shall apply the same for or towards his or her maintenance, education, or otherwise for his or her benefit; (*Second witnessing part, whereby lady assigns her share in the said policy of assurance, so effected as aforesaid, and all monies secured thereby, to trustees, as ante, p.* 10, 11, *In trust for the said lady, till the said intended marriage, and afterwards,*) *Upon trust*, that they the said [*trustees*], or the survivor of them, and the executors or administrators of such survivor, do and shall receive, and enforce payment or transfer of the same, or the monies, stocks, funds, or securities, which shall be payable, or transferrable, and do and shall continue, &c. (*Trust to invest and vary, and stand possessed thereof, as ante, p.* 2, 3), *Upon trust*, that the said trustees or trustee for the time being, do and shall, during the joint lives of the said [*gentleman*] and [*lady*], pay, apply, and dispose of the said trust monies, stocks, funds, and securities, in the same manner, for the separate use and benefit of the said [*lady*]; and with all full and ample power to her, of appointment, and giving receipts, as is and are hereinbefore mentioned, declared, and contained in her

and after decease of survivor, to children ;

and if no children, as lady shall appoint.

Proviso for maintenance.

Second witnessing part, whereby money secured by policy is assured to trustees to receive the same ;

upon trust for separate use of lady by reference ;

favour, of and concerning the said part, share, and proportion, hereby firstly assigned, or intended so to be, of and in the said annual sum of pounds, interests, dividends and annual produce, as hereinbefore mentioned, (*and then to the survivor, as ante*, Vol. VII. *p.* 507), and after the decease of the survivor of them, the said [*gentleman*] and [*lady*], (*to the children, as the said lady should appoint, and in default, to them at twenty-one, or marriage; hotchpot proviso, as ante*, Vol. VII. *p.* 507, 508); PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that after the decease of them the said [*gentleman*] and [*lady*], and before the said trust-monies, stocks, funds, and securities, shall have become vested in such child or children, as aforesaid, the said trustees or trustee for the time being, do and shall receive the interest, dividends, and annual produce of the same, or of so much thereof as shall not, for the time being, have become vested, and do and shall apply the same, or so much thereof as he shall think fit, for or towards the maintenance and education, or otherwise, for the benefit of the children and child for the time being entitled thereto in expectancy; *And* do and shall accumulate the residue, &c., (*accumulation clause; And if no child, see* Vol. VII. 509), the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or of so much thereof respectively as shall not be applied and disposed of under the trusts and provisions hereinbefore declared and contained, shall remain and be upon the like trusts, and subject to the like powers, as are and is, in the same event, hereinbefore declared and contained, of and concerning the said parts, shares, and proportions hereby firstly assigned, or intended so to be, of and in the said sum of pounds, and the interest, dividends, and annual produce, hereinbefore mentioned; (*Trustee clauses, as ante*, Vol. VII. *p.* 511, 512). IN WITNESS, &c.

OF SHARE IN MONIES, AND MONEY SECURED BY POLICY.

and then to survivor, and after decease of survivor,

Proviso for maintenance and accumulation;

and if there shall be no child, upon the same trusts as are declared in the same event of firstly settled monies.

OF ADVOWSON.

MARRIAGE SETTLEMENT, *whereby an* ADVOWSON *is conveyed to Trustees, upon Trust to present Gentleman to the same, when he shall become qualified; but if Gentleman shall not be qualified, upon Trust to present such Person as Trustees shall think fit, and take a Bond to resign in favour of Gentleman; and when Gentleman shall be qualified to be presented, upon Trust to procure the Resignation thereof, and present Gentleman thereto; and after the Decease of Gentleman, or whenever he shall cease to be Rector, upon Trust for Father of Gentleman in Fee; (with forms of Bonds for the* SPECIAL RESIGNATION *of a Living, in note).*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*father of gentleman*] of, &c. of the first part; [*gentleman*] of, &c. of the second part; [*lady*] of, &c. of the third part; and [*trustees*] of, &c. of the fourth part; WHEREAS a marriage hath been agreed upon, and is about to be had and solemnized between the said [*gentleman*] and [*lady*]; AND WHEREAS by an indenture bearing even date with these presents, and made or expressed to be made between the said [*lady*], of the first part; the said [*gentleman*], of the second part; and [*trustees*] of, &c. of the third part; the sum of pounds, three per cent. consols (being the portion or fortune of the said [*lady*]), was assigned by the said [*lady*] to the said [*trustees*] upon certain trusts, for the benefit of the said [*gentleman*] and [*lady*], and the issue of the said marriage, as therein mentioned; AND WHEREAS the said [*father of gentleman*] is seised of, or well entitled in fee-simple to the advowson, right of patronage and presentation of the rectory and parish church of with the appurtenances; AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said [*father*

Agreement for marriage.

Indenture, whereby lady's fortune is settled.

That father of gentleman is seised in fee of advowson.

Agreement to convey advowson to trustees,

of gentleman] should convey and assure the said advowson or parish church, hereditaments, and premises, to the said [*trustees*], upon the trusts, and for the intents and purposes hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, and of the said settlement so made by the said [*lady*] as aforesaid, and also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*father of gentleman*] paid, at or before the sealing and delivery of these presents) (the receipt whereof is hereby acknowledged), HE the said [*father of gentleman*], *Hath* granted, bargained, sold, aliened, released, and confirmed; and by these presents, *Doth* grant, bargain, sell, alien, release, and confirm unto the said [*trustees*], (in their actual possession, &c.) and their heirs, ALL THAT the advowson, donation, right of patronage and presentation of, in, and to the rectory and parish church of , with all and singular the rights, members, privileges, and appurtenances thereto belonging, *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said advowson, donation, right of patronage, and presentation of, in, and to the said rectory and parish church of , with the appurtenances, unto the said [*trustees*], their heirs and assigns, *To the use* of the said [*trustees*], their heirs and assigns for ever, upon the trusts hereinafter mentioned, (that is to say); *Upon trust* to present the said [*gentleman*] to the same, when and as the said rectory and parish church, hereditaments, and premises, hereby granted and released, or intended so to be, shall hereafter become vacant, if the said [*gentleman*] shall have previously become qualified to accept the same, by taking holy orders, and be willing to be presented thereto, in order that the said [*gentleman*] may be instituted and inducted the rector, parson, or incumbent of the said rectory or parish church, hereditaments, and premises hereby granted and released, or intended so to be; but if the said [*gentleman*] shall not be qualified at the time of the vacancy in the said rectory and parish church, or shall be unwilling to be presented as aforesaid; then upon trust to present to the said rectory or parish church, such fit person,

OF ADVOWSON.

upon trusts hereinafter mentioned.

Testatum, whereby father of gentleman

conveys

Advowson.

Habendum to trustees in fee;

upon trust to present gentleman to the same, when he shall become qualified;

but if gentleman shall not then be qualified,

In trust to present such person as father of

OF ADVOWSON.

gentleman shall think fit, and take a bond

as the said [*father of gentleman*], his heirs and assigns, shall think proper, and as shall be qualified to accept the same, and taking from such person a bond (*a*) to be execu-

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Bonds of resignation.

(*a*) The subject of resignation bonds has been fully entered into by Mr. Bythewood, in the third volume of this work, (Stewart's edit.) p. 360, *et seq.* In p. 431 of that volume, it is stated, that both general and special bonds of resignation are now invalid, and the forms of bonds of special resignation were accordingly omitted. At the time that note was written, I was not aware of a very late statute on this subject, which has restored the law on this subject, in some measure, to its original state.

By this statute a bond may be taken to secure the resignation of a living in favour of any one person whosoever, and in favour of any two persons, if they are related to the patron within a certain degree. This act renders the cases discussed and stated at length by Mr. Bythewood, in 3 Byth. by Stewart, 360, *et seq.* of much importance and utility.

This act is entitled, "An act for rendering valid bonds, covenants, and other assurances for the resignation of ecclesiastical preferments in certain specified cases," and received the royal assent the 28th July, 1828. Its provisions are as follow:

"Whereas it is expedient that certain bonds, covenants, and other assurances for the resignation of ecclesiastical preferments, should be rendered valid in the cases, and subject to the limitations hereinafter specified: Be it therefore enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That every engagement by promise, grant, agreement, or covenant, which shall be really and *bonâ fide* made, given, or entered into, at any time after the passing of this act, for the resignation of any spiritual office, being a benefice with cure of souls, dignity, prebend, or living ecclesiastical, to the intent or purpose to be manifested by the terms of such engagement, that any *one* person whosoever to be specially named and described therein, or one of *two* persons to be specially named or described therein, being such persons as are hereinafter mentioned, shall be presented, collated, nominated, or appointed to such spiritual office, or that the same shall be given or bestowed to or upon him, shall be good, valid, and effectual in the law, to all intents and purposes whatsoever, and the performance of the same may also be enforced in equity: Provided always, that such engagement shall be so entered into before the presentation, nomination, collation, or appointment of the party so entering into the same as aforesaid.

Engagements entered into for the resignation of any benefice upon notice or request, to be valid.

Proviso.

Relationship of such persons.

"II. Provided always, and be it further enacted, that where two

ted before the presentation, to resign the same upon request, to the intent that the said [*gentleman*], when capa- OF ADVOWSON. from him to resign in favour

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persons shall be so specially named and described in such engagement, each of them shall be either by blood or marriage, an uncle, son, grandson, brother, nephew or grandnephew, of the patron or of one of the patrons of such spiritual office, not being merely a trustee or trustees of the patronage of the same, or of the person or one of the persons for whom the patron or patrons shall be a trustee or trustees, or of the person or one of the persons by whose direction such presentation, collation, gift, or bestowing, shall be intended to be made, or of any married woman, whose husband in her right shall be the patron or one of the patrons of such spiritual office, or of any other person in whose right such presentation, collation, gift, or bestowing, shall be intended to be made.

No presentation to any spiritual office shall be void by reason of such agreement to resign.

" III. And be it further enacted, that no presentation, collation, gift, or bestowing to or of any such spiritual office, of or upon any spiritual person, to be made after the passing of this act, nor any admission, institution, investiture, or induction thereupon, shall be void, frustrate, or of no effect in law, for or by reason of any such engagement so to be made, given, or entered into, by such spiritual person, or any other person or persons, to or for the patron or patrons of such spiritual office, or to or with any other person or persons for the resignation of the same as aforesaid; and that it shall not be lawful for the king's most excellent majesty, his heir, or successors, for or by reason of any such engagements as aforesaid, to present or collate unto, or give or bestow such spiritual office; and that such spiritual person, and patron or patrons, or other person or persons respectively, shall not be liable to any pains, penalty, forfeitures, loss, or disability, nor to any prosecution, or other proceeding, civil, criminal, or penal, in any court ecclesiastical or temporal, for or by reason of his, her, or their having made, given, or entered into, or accepted or taken such engagement as aforesaid; and that every such presentation or collation, gift or bestowing, to be made after the passing of this act, and every admission, institution, investiture, and induction thereupon, shall be as valid and effectual in the law to all intents and purposes whatsoever, as if such engagement had not been made, given, or entered into, or accepted or taken; any thing in an act passed in the 31st year of her late majesty Queen Elizabeth, intituled " An Act against Abuses in Elections of Scholars and Presentations to Benefices," or in any other act, statute, or canon, or any law to the contrary in anywise notwithstanding.

Persons making such agreement not to be liable to penalty.

Such presentations to be valid.

31 Eliz. c. 6.

Not to extend to any engagements, unless

" IV. Provided always, and be it further enacted, that nothing in his act shall extend to the case of any such engagement as aforesaid,

OF ADVOWSON.

of gentleman; and when gentleman shall be

ble and willing, may be presented to the same; *And* upon this further trust, that when and so soon as the said [*gentleman*] shall be qualified and willing to be presented to

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the deed be deposited within two months with the registrar of the diocese, or peculiar jurisdiction wherein the benefice is situated.

unless one part of the deed, instrument, or writing, by which such engagement shall be made, given, and entered into, shall, within the space of two calendar months next after the date thereof, be deposited in the office of the registrar of the diocese, wherein such benefice with cure of souls, dignity, prebend, or living ecclesiastical, for the resignation whereof such engagement shall be made, given, or entered into as aforesaid, shall be locally situate, except as to such benefices with cure of souls, dignities, prebends, or livings ecclesiastical, as are under the jurisdiction of any archbishop or bishop, in which case such document as aforesaid shall be deposited in the office of the registrar of that peculiar jurisdiction to which any such benefice with cure of souls, dignity, prebend, or living ecclesiastical, shall be subject; and such registrar shall respectively deposit and preserve the same, and shall give and sign a certificate of such deposit thereof; and every such deed, instrument, or writing, shall be produced at all proper and usual hours at such registry, to every person applying to inspect the same; and an office copy of each such deed, instrument, or writing, certified under the hand of the registrar, (and which office copy so certified, the registrar shall in all cases grant to every person who shall apply for the same,) shall in all cases be admitted and allowed as legal evidence thereof, in all courts whatsoever; and every such registrar shall be entitled to the sum of two shillings and no more, for so depositing as aforesaid such deed, instrument, or writing, and so as aforesaid certifying such deposit thereof; and the sum of one shilling and no more, for each search to be made for the same; and the sum of sixpence and no more, over and besides the stamp duty, if any, for each folio of seventy-two words of each such office copy so certified as aforesaid.

Deed to be open to inspection,

and a certified copy to be admitted as evidence.

Fees to the registrar.

Resignation to state the engagement, and name of the person for whom made.

Resignation to be void, unless the person be presented within six months.

" V. And be it further enacted, that every resignation to be made in pursuance of any such engagement as aforesaid, shall refer to the engagement in pursuance of which it is made, and state the name of the person for whose benefit it is made; and that it shall be lawful for the ordinary to refuse such resignation, unless upon good and sufficient cause to be shewn for that purpose; and that such resignation shall not be valid or effectual, except for the purpose of allowing the person for whose benefit it shall be so made, to be presented, collated, nominated, and appointed to the spiritual office thereby resigned, and shall be absolutely null and void unless such person shall be presented, col-

the said rectory and parish church, hereditaments, and premises hereby granted and released, or intended so to be, *Then* that they the said [*trustees*], and the survivor of them, qualified, to be presented, upon trust to

OF ADVOWSON.

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lated, nominated, and appointed as aforesaid, within six calendar months next after notice of such resignation shall have been given to the patron or patrons of such spiritual office.

"VI. Provided always, and be it further enacted, that nothing in this act shall extend to any case where the presentation, collation, gift, or bestowing to or of any such spiritual office as aforesaid, shall be made by the king's most excellent majesty, his heirs or successors, in right of his crown, or of his duchy of Lancaster, or by any archbishop, bishop, or other ecclesiastical person, in right of his archbishoprick, bishoprick, or other ecclesiastical living, office, or dignity, or by any other body politic or corporate, whether aggregate or sole, or by any other person or persons, in right of any office or dignity, or by any company, or any feoffees or trustees for charitable or other public purposes, or by any other person or persons not entitled to the patronage of such spiritual office as private property." Nothing herein to extend to presentations made by the king, &c.

The following forms of bonds of special resignation may here be introduced, and they may be altered to suit the particular relation for whose benefit they are taken.

BOND OF SPECIAL RESIGNATION.

KNOW ALL MEN by these presents, that I [*obligor*] of, &c. am held and firmly bound to [*obligee*] of, &c. and [*obligee*] of, &c., in the sum of pounds of, &c. to be paid to the said [*obligees*], or their certain attorney, executors, administrators, or assigns, for which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents: Sealed, &c. Commencement.

WHEREAS by indentures of lease and release, or settlement, bearing date on or about the day of , and made, or expressed to be made, between [*father of gentleman*] (therein described), of the first part; [*gentleman*], (therein described), of the second part; [*lady*], (therein also described), of the third part; and the said [*obligees*], Recital of settlement, whereby father of gentleman conveys rectory to trustees, upon trust to present gentleman, his son, when he

OF ADVOWSON.

procure the resignation, and present gentle-

his heirs and assigns, shall require and enforce such resignation as aforesaid, in order that the said [*gentleman*] may be instituted and inducted the rector, parson, or incumbent

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shall become qualified;

of the fourth part; the advowson, right of patronage and presentation of the rectory and parish church of , with the appurtenances, were (for the considerations in the said indenture of release and settlement mentioned) conveyed and assured unto and to the use of the said [*obligees*], their heirs and assigns; *Nevertheless,* upon trust to present the said [*gentleman*], the son of the said [*father of gentleman*], to the same, when and as the same should thereafter become vacant, if the said [*gentleman*] should have previously become qualified to accept the same, by taking holy orders, and be willing to be presented thereto, in order that the said [*gentleman*] might be instituted and inducted the rector, parson, or incumbent of the said rectory or parish church; *But* if the said should not be qualified at the time of the vacancy in the said rectory and parish church, or should be unwilling to be presented as aforesaid, *Then,* upon trust to present to the said rectory or parish church, such fit person as the said [*father of gentleman*], his heirs and assigns, should think proper, and as should be qualified to accept the same, and taking from such person a bond to resign the same upon request, to the intent that the said [*gentleman*], when capable and willing, might be presented to the same; AND WHEREAS the said rectory or parish church is now vacant by the death of , clerk, the last incumbent there; AND WHEREAS the said [*gentleman*] is not yet qualified to accept the same, and the above named [*obligees*], at the request of the said [*father of gentleman*],* intend by writing under their hands and seals, bearing date the day of , to present the above bound [*obligor*] to the bishop of the said dio-

but if gentleman should not be qualified, upon trust to present such person as father of gentleman should think proper;

that rectory is now vacant, and gentleman is not qualified;

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* It is required by the 9 Geo. IV. c. 94. *ante,* p. 60, that the bond should be taken before the presentation is made.

of the said rectory or parish church accordingly; and after the decease of the said [*gentleman*], or if he shall be pre- OF ADVOWSON. man accordingly; and after de-

cese, to the end that he the said [*obligor*] may be admitted, instituted, and inducted into the said rectory or parish church; AND WHEREAS the said [*obligor*] hath agreed to be personally resident in the said parish of so long as he shall continue rector or incumbent there, without procuring or accepting any qualification, licence, or dispensation, from any person or persons, for dispensing with his the said [*obligor's*] residence, in or upon the said parish; AND WHEREAS the said [*obligor*] hath agreed, that when and so soon as the said [*gentleman*], the son of the said [*father of gentleman*], shall be capable and qualified to accept, and be presented to the said rectory and parish church, then, upon the request of the said [*obligees*], or the survivor of them, his heirs or assigns, to resign the said living, in order that the said [*gentleman*] may be presented thereto: NOW THE CONDITION of the above written obligation is such, that if the said [*obligor*] shall procure himself to be legally and actually admitted, instituted, and inducted into the said rectory or parish church, by virtue of and under the presentation hereinbefore mentioned; *And* also if the said [*obligor*] shall afterwards reside, and shall continue to live and inhabit in and upon the said parish of for so long time as he the said [*obligor*] shall continue rector and incumbent there, without procuring or accepting any qualification, licence, or dispensation, from any person or persons whatsoever, whereby to dispense with his the said [*obligor's*] residence in or upon the said parish; *And* also, that if the said [*gentleman*] shall be qualified and willing to be presented to the said rectory or parish church, then in that event the said [*obligor*] shall, upon request to him made by the said [*obligees*], or the survivor of them, his heirs or assigns, effectually make void the admittance, institution, and induction of him the said [*obligor*] into the said rectory or parish church, by making a full and absolute legal resignation and renunciation of the same to the bishop of the diocese for the time being, and by procuring the said bishop to

BONDS OF RESIGNATION.

that obligor has agreed to be resident,

and agreement to resign the rectory when gentleman shall become qualified.

Condition, that if obligor shall procure himself to be inducted, and shall reside in the parish,

and if gentleman shall be qualified, obligor will resign on request of obligees.

OF ADVOWSON. sented, to the said rectory or parish church, hereditaments,
Release of gentle- and premises, hereby granted and released, or intended so

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BONDS OF RESIGNATION. accept such resignation, so that the said [*obligees*], or the survivor of them, his heirs or assigns, may present the said [*gentleman*], being so qualified as aforesaid, free from the title, and all claims and demands of the said [*obligor*] therein, *Then* the above written bond or obligation shall be void; but otherwise the same shall be and remain in full force and virtue.

BOND from the Reverend [*Parson*] of &c. to [*Patron*] of, &c. Esquire, in (*double Value of the Living for the Parson's Life*) Pounds. (*As in* 3 *Byth.* 179.)

Recital that living is vacant by resignation; that patron intends to present obligee, who has agreed to reside during his incumbency;

WHEREAS the vicarage of [B.] in the county of [*Devon*] is now vacant, by the resignation of the Reverend [*last vicar*]; and the said [*patron*], who is the present patron of the said vicarage, hath an intention to present the above bounden [*parson*] to the said vicarage; *And* the said [*parson*] hath agreed to reside there while he shall be the incumbent thereof, without being absent more than two months in any one year: AND WHEREAS the said [*patron*] hath two sons, who are both infants, and it is the intention of the said [*patron*] that one of his said sons should be brought up as a clergyman, and be presented to the said vicarage as soon as he shall be capable of receiving the same: NOW THE CONDITION of the above written obligation is such, that if the said [*parson*] shall and do, during the time he shall hold the said vicarage, personally reside thereon, without being absent for more than two months in any one year; *And also* in case any son of the said [*patron*] shall live to attain the age of twenty-four years, and to take priest's orders, according to the rites of the church of England, or be capable of taking priest's orders, and the said [*patron*], his executors or administrators, being the patron or patrons of the said vicarage,

that patron has two infant sons, one of whom he intends shall be a parson, and be presented to the living.

Condition that obligee shall not be absent from the living more than two months in a year;

that in case any son of patron's shall take priests' orders, or be capable of so doing, and pa-

to be, after he shall, either by death, deprivation, resignation, or in any other manner whatsoever, cease to be the man, or when he shall cease

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shall be thereupon minded to present such son of the said [*patron*] to the said vicarage, upon such son being duly qualified, then if the said [*parson*] shall, within one calendar month after request made to him for that purpose, by the said [*patron*], his executors or administrators, absolutely and in due form of law, resign the said vicarage, and cause such resignation to be accepted, so that such vicarage may, within one month, become vacant; *And* shall also, in the same month, give notice of such resignation to the said [*patron*], his executors or administrators, *Then* this obligation to be void, otherwise to remain in full force and virtue.

tron shall wish to present him, then if obligee should, within one month after request, resign living, and cause resignation to be accepted, and in the same month give patron notice of such resignation, then

bond to be void.

This bond should be taken before the presentation is made. See the statute, *ante*, p. 60.

BOND *to enforce the Resignation of a Rectory, when the Patron's Protegé shall be fit to be presented.*

BOND from [*Parson*] of, &c. Clerk to [*Patron*] of, &c. Esquire, in the sum of 3,000*l.* (*as in* 3 *Byth.* p. 179.)

Commencement.

WHEREAS the rectory of the church of , in the county and diocese of , is now vacant by the death of the reverend [A.B.], the last incumbent; and the above named [*patron*], the undoubted patron of the said rectory and church, intends, by writing under his hand and seal, bearing even date with the above written obligation, to present the above-bound [*parson*] to the bishop of the said diocese, to the end that the said [*parson*] may be admitted, instituted, and inducted into the said rectory and church;

Recital that rectory is vacant by death of last incumbent; that patron intends to present obligee to the bishop.

OF ADVOWSON.

to be rector, upon trust for father of gentleman in fee.

rector, parson, or incumbent of the same rectory or parish church, hereditaments, and premises, then, upon trust for the said [*father of gentleman*], his heirs and assigns for ever. (*Covenants for title by father of gentleman, with trustees, as ante*, Vol. VII. *p.* 447—450, *altering the reference to the parcels, to* "advowson or parish church, hereditaments, and premises hereby granted and released, or intended so to be.") IN WITNESS, &c.

Condition, that if obligee shall be inducted, and should, when patron's protegé shall be fit to be presented, resign living, and procure bishop to accept resignation,

NOW THE CONDITION of the above written obligation is such, that if the above-bounden [*parson*] shall be admitted, instituted, and inducted into the said rectory and church, upon the said presentation; *Then* if he do and shall, when and so soon as [*protegé*] shall be of proper age, and in orders fit to be presented to the said church, make a full, absolute, and legal resignation of the said rectory and church, to the bishop of the said diocese for the time being, and procure such resignation to be accepted, so that the said [*patron*] or the patron or patrons of the said rectory for the time being, may present the said [*protegé*] to be rector of the said church; *Then* the above written obligation shall be void and of no effect; but otherwise the same shall be and remain in full force and virtue.

bond to be void.

MARRIAGE SETTLEMENT, *of a* SHARE *in a Sum of Pounds, to which Lady will be entitled on the Death of her Mother; whereby it is assigned to Trustees, upon Trust for the Benefit of Lady, and the Children of the Marriage.* OF A SHARE IN A SUM OF MONEY.

THIS INDENTURE, made the day of , BETWEEN [*gentleman*] of, &c. of the first part; [*lady*] of, &c. of the second part; [*trustees of will*] of, &c. of the third part; and [*trustees*] of, &c. of the fourth part; WHEREAS a marriage is agreed upon, and intended to be shortly had and solemnized between the said [*gentleman*] and [*lady*]; AND WHEREAS the said [*lady*] is, under the will of [D.], late of, &c. deceased, possessed of, or well entitled to have paid to her after the decease of her mother one equal sixth part of the sum of ten thousand pounds of lawful money of, &c.; AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the portion or fortune of the said [*lady*], (which consists of the said sixth part or share of the said sum of ten thousand pounds,) should be settled upon the trusts, and in the manner hereinafter mentioned concerning the same, for the benefit of the said [*lady*], and the issue of the said marriage: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, and of the sum of ten shillings of, &c. to the said [*lady*], paid by the said [*trustees*]; (the receipt, &c.) SHE the said [*lady*], with the consent, privity, and approbation of the said [*gentleman*] and [*trustees of the will*], testified by their respectively being parties to, and sealing and delivering these presents), *Hath* bargained, sold, and assigned, and by these presents *Doth* bargain, sell, and as-

Parties.

Agreement for marriage,

possession by lady of share in property;

and agreement to settle it.

Testatum, whereby lady assigns

OF A SHARE IN A SUM OF MONEY.

her sixth share.

sign unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said sixth part or share, which under or by virtue of the said will of the said [D.] deceased, the said [*lady*] is entitled to have paid to her of the said sum of ten thousand pounds, after the decease of her said mother; and the securities in which the said portion or share is or shall be invested, and the interest and dividends of the said sixth part or share, from the decease of the said mother of the said [*lady*]; *And all the right*, title, interest, possibility, claim, and demand whatsoever, both at law and in equity, of her the said [*lady*], in, to, or out of the same; TO HAVE, HOLD, RECEIVE, AND TAKE the said sixth part or share and premises hereby assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns; but upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same; *And* for better enabling the said [*trustees*] to recover and receive the said undivided sixth part or share, after the decease of the mother of the said [*lady*], THEY the said [*gentleman*] and [*lady*] *Do*, and each of them *Doth* hereby irrevocably make, nominate, and appoint, and in their and each of their place and stead put the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, or assigns of such survivor, to be the true and lawful attornies and attorney of the said [*lady*] and [*gentleman*], and each of them, to ask, demand, sue for, recover, and receive of and from all and every persons and person, who are, is, or shall or may be liable to pay the same respectively, the said one sixth part or share and premises hereby assigned, or intended so to be; and on payment thereof or of any part thereof respectively, to give, sign, and execute receipts, acquittances, releases, and other discharges for the same respectively, and on nonpayment thereof, or of any part thereof respectively, to bring, commence, carry on, and prosecute any action, suit, or other proceeding whatsoever, for recovering and compelling payment thereof respectively; and for all or any of the purposes aforesaid, to use the names or name of the said [*gentleman*] and [*lady*] or either of them, and generally to

Habendum to the trustee, upon the trusts hereinafter declared.

Power of attorney to trustees, to receive and enforce payment of the share.

OF A SHARE IN A SUM OF MONEY.

do, execute, and perform any other act, deed, matter or thing whatsoever, as the said [*gentleman*] and [*lady*], or either of them, could or might do in their, his, or her own proper persons or person in case these presents had not been executed; and whatsoever the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall lawfully do or cause to be done in or about the premises, the said [*gentleman*] and [*lady*] *Do* hereby jointly for themselves, their heirs, executors, and administrators, and each of them *Doth* hereby respectively for himself and herself, and his and her heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, to allow, ratify, and confirm. AND in pursuance and further performance of the said agreement, so far as the same relates to the settlement to be made on the part of the said [*lady*] and [*trustees of will*], it is hereby agreed and declared, that the said [*trustees*], their executors and administrators, shall stand and be possessed of and interested in the said sixth part or share and premises hereby assigned, or intended so to be, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same (that is to say); as to the said sixth part or share and premises hereby assigned or intended so to be, *In trust* for the said [*lady*], her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; *And* from and after the solemnization of the said intended marriage, *Upon this further trust*, that they the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall (*invest the same, and vary the securities, as ante*, Vol. VII. *p.* 514, *and stand possessed thereof during the joint lives of gentleman and lady, for separate use of lady; and after her death, upon trust for her children equally, with usual clauses and provisions, as in* Vol. VII. 514—517). IN WITNESS, &c.

Declaration, that trustees shall stand possessed of the said share upon the trusts hereinafter mentioned:

upon trust for lady until marriage,

and after marriage, to invest and vary the same, and stand possessed of securities.

OF FURNITURE, PLATE, AND JEWELS.

WITNESSING PART *in Marriage Settlement, whereby* FURNITURE, PLATE, *and* JEWELS, *are settled upon Trust, as to* FURNITURE *and* PLATE, *for the separate Use of Lady, for her Life; and after her Decease, In Trust for Gentleman for Life; and after the Decease of Survivor, Upon Trusts which will nearest correspond with Uses declared of the Freeholds:* POWERS *to Trustees to Repair and Change Furniture and Plate: and as to the* JEWELS, *upon such Trusts as Lady shall appoint; and in Default of Appointment, to her separate Use for Life; and after her Decease, In Trust for such Persons as Lady shall appoint; and in Default of Appointment, In Trust for her Next of Kin.*

Declaration, that trustees shall stand possessed of furniture, plate, and jewels, upon the trusts hereinafter mentioned.

AND THIS INDENTURE FURTHER WITNESSETH, AND it is hereby agreed and declared between and by the parties hereto, *That* the said [*trustees*], and the survivor of them, his executors and administrators, shall stand and be possessed of and interested in ALL and singular the furniture, plate, and jewels hereby assigned, or intended so to be, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same, (that is to say); as

As to furniture and plate, upon trust to permit lady to enjoy the same for her separate use;

to the furniture and plate, *Upon trust* that they the said [*trustees*], and the survivor of them, his executors and administrators, do and shall permit and suffer the said [*lady*], from time to time, and at all times hereafter, during her life, to have, use, and enjoy the furniture and plate to and for her own sole use and benefit, exclusively of the said [*gentleman*], or of any husband with whom she may marry after his decease, and without being in any manner subject or liable to the controul, debts, forfeiture, dis-

OF FURNITURE, PLATE, AND JEWELS.

posal, or engagements of him the said [*gentleman*], or of any such future husbands or husband; *And* after the decease of the said [*lady*], *In trust* for the said [*gentleman*], for and during the term of his natural life; *And* from and after the decease of the survivor of them the said [*gentleman*] and [*lady*], upon and for such trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, as, regard being had to the nature or quality of the premises, will best or nearest correspond with the uses, trusts, intents, purposes, powers, provisoes, agreements, and declarations hereinbefore agreed to be limited of and concerning the estates of which the said [*lady*] is seised in tail male, to the intent, and so that as near as the circumstances of the case will admit, the said furniture and plate may from time to time be held and enjoyed by the person or persons who, under the settlement hereby agreed to be made of the estates of which the said [*lady*] is seised in tail male, shall from time to time be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the same estates: PROVIDED ALWAYS, that for the effect or purpose of transmission, the same shall not vest absolutely in any child of the said intended marriage, until such child shall attain the age of twenty-one years; AND it is hereby agreed and declared, that the said [*trustees*], and the survivor of them, his executors or administrators, shall from time to time examine the state and condition of the said furniture and plate, and cause such reparations and restorations to be made of the same, as they or he shall judge reasonable, the expense of which shall be defrayed by the person or persons entitled to the use thereof for the time being; AND it is hereby also further agreed and declared, that it shall and may be lawful for the said trustees or trustee for the time being, from time to time, during the lives of the said [*gentleman*] and [*lady*], or the survivor of them, upon the request in writing of them, or of the survivor of them, to exchange the said furniture and plate hereby assigned, or intended so to be, or any part thereof, for any other articles of furniture of equal value, or for any other articles of equal weight or value, and also to permit the said furniture, or any part

and after her decease, In trust for gentleman for life;

and after the decease of survivor, upon such trusts as will nearest correspond with the uses declared of the freehold estates.

Proviso against transmission by tenant in tail, until he shall attain twenty-one.

Agreement that trustees shall have power to repair furniture.

Power to trustees to exchange furniture and plate, at request of gentleman and lady.

OF FURNITURE, PLATE, AND JEWELS.

thereof, to be from time to time altered by the said [*gentleman*] and [*lady*], and the survivor of them, as they or he shall think fit, provided the same, by any such alteration, be not diminished in value; the expenses of all which exchanges and alterations shall be borne by the said [*gentleman*] and [*lady*], or the survivor of them; AND as to the said jewels (*a*) hereby assigned, or intended so to be, *It* is

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Paraphernalia of wife:

(*a*) By long established custom, the wife is entitled, besides her dower, to her jewels and wearing apparel, known under the general term of her *paraphernalia*, unless her husband shall, in his life-time, dispose of them; Noy's Max. 108, chap. 49; so also it seems, that any thing that may have been given to her for clothes, will also be considered as belonging to her, although not actually made up; 1 Rol. Ab. 911; 2 Com. Dig. 86; and the paraphernalia granted to a wife must be suitable to her rank in life, of which the court is to be the judge; *Hastings* v. *Douglas*, W. Jon. 332; Cro. Car. 343. Paraphernalia must be given by the husband to the wife for her use, and must not come from a stranger; *Graham* v. *Lord Londonderry*, 3 Atk. 393; and they must be proved to have been worn by the wife; *Seymour* v. *Tresilian*, 3 Atk. 358; but they need not be proved to have been worn constantly by her; it will be sufficient if they were used by her on festivals or other public occasions. *Graham* v. *Lord Londonderry*, *ubi sup.*

Although the husband may dispose of her paraphernalia during his life, yet the wife has no power of this nature; 3 Atk. 394. And the disposition of the husband must amount to an actual sale, and must not be a mere pledge, for in this case, if he leaves sufficient to pay his debts, the wife's claim to her paraphernalia will not be defeated, but she will be entitled to have them redeemed out of the husband's personal estate; *Graham* v. *Lord Londonderry*, 3 Atk. 393. And it is now well settled, that the husband cannot dispose of his wife's paraphernalia by his will; 2 Bla. Com. 436; 2 Atk. 77; 3 Atk. 358; 1 P. Wms. 729; and see *Clarges* v. *Duchess of Albemarle*, 2 Vern. 246. Neither are they subject to legacies; *Tipping* v. *Tipping*, 1 P. Wms. 729; *Snelson* v. *Corbet*, 3 Atk. 369. And such part of the wife's paraphernalia as consists of wearing apparel, is not liable to her husband's debts; Noy's Max. 188; 2 Bl. Com. 436; 2 Freem. 304; but her jewels and ornaments are liable to her husband's debts; 17 Ves. 273; 2 Ves. sen. 7; although equity will, even as respects them, apply the doctrine of marshalling assets in her favour; *Tipping* v. *Tipping*, *ubi sup.*; *Snelson* v. *Corbet*, *ubi sup.*; *Aldrich* v. *Cooper*,

hereby agreed and declared that they the said [*trustees*], and the survivor of them, his executors and administrators, do and shall, from time to time, stand and be possessed of and interested in the same, upon such trusts, and for such purposes, as the said [*lady*] shall by any writing under her hand direct or appoint; or in default of such direction or appointment, do and shall permit and suffer the said [*lady*], from time to time, and at all times hereafter, to have, use, and enjoy the said jewels, to and for her own separate and sole use and benefit, exclusively of him the said [*gentleman*], or of any future husband with whom she may intermarry, without being in any wise subject or liable to the controul, debts, forfeitures, disposals, or engagements of the said [*gentleman*], or any future husband; *And* after the decease of the said [*lady*], *In trust* for such person or persons, and such intents and purposes, as the said [*lady*] from time to time, notwithstanding her coverture, and as if she were sole and unmarried, by her last will and testament in writing, or any writing purporting to be her last will and testament, or any codicil or codicils thereto, in her hand writing, or signed by her, shall direct or appoint; *And* in default of such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend, *In trust* for the persons who under the statutes for the distribution of the estates of intestates, would be entitled to the same, if the said [*lady*] had survived the said [*gentleman*], and had died intestate.

OF FURNITURE, PLATE, AND JEWELS.

And as to the jewels, it is agreed that trustees shall be interested therein upon such trusts as lady shall appoint;

and in default of appointment, to permit lady to enjoy them for her separate use;

and after her decease, In trust for such persons as lady shall appoint;

and in default of appointment, In trust for her next of kin.

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8 Ves. 397; and she may stand in the place of the creditors to the amount of the jewels exhausted. As to this, see 2 Rop. Husb. and Wife, 144.

But the widow's right to her paraphernalia may be barred by a settlement; *Cholmely* v. *Cholmely*, 2 Vern. 83; or by her acquiescence in a gift of them to herself for life only, in which case, on her death, her personal representative cannot claim them; *Clarges* v. *Albemarle*, 2 Vern. 247.

POWER TO LEND.

Power *to the Trustees of Settlement to* LEND *a Portion of the Trust Monies to Gentleman, on such Specialty Security as Trustees shall think advisable.*

Power to the trustees, on request, to raise any sum of money not exceeding —*l.*,

PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the said trustees and trustee for the time being, shall at any time or times hereafter, if so required in writing by the said [A. B.], but with the consent in writing of the said [C. D.], during her life, levy and raise out of the said trust monies, stocks, funds, and securities, any sum or sums of money, not exceeding in the whole the sum of pounds of lawful money of Great Britain and Ireland, and advance and lend the said sum and sums which shall be so raised to the said [A. B,], for such time and times, and on such specialty security or securities, as the said trustee or trustees for the time being shall think proper; AND it is hereby agreed and declared between and by the parties to these presents, that the said trustees or trustee for the time being, shall stand and be possessed of and interested in the said sum or sums which shall be so raised, and the security or securities to be given for the same as aforesaid, and the interest thereof, upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, as are hereinbefore expressed and declared of and concerning the trust monies, stocks, funds, and securities, out of which such sum or sums shall be raised, and the interest, dividends, and annual produce thereof.

and lend the same to A. B., on such security as they shall think proper.

Agreement that trustees shall stand possessed of the monies lent upon the original trusts.

PROVISION *in Settlement, whereby it is agreed that if the Gentleman shall secure an equal Annuity to Lady, out of Funded Property, the* JOINTURE RENT *charged by the Settlement on the Hereditaments thereby conveyed, shall cease.*

PROVISION FOR CESSER OF JOINTURE.

PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said [*gentleman*], his heirs, executors, administrators, or assigns, shall, during the life of the said [*lady*], at the costs and charges of the said [*gentleman*], his heirs, executors, administrators, or assigns, and to the satisfaction of the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, lay out and invest a competent sum of money in the names of two trustees, (the one to be nominated by the person or persons laying out and investing such sum of money, and the other by the said [*lady*]) in the parliamentary stocks or public funds of Great Britain, or at interest upon real securities in England, and shall, at the like costs and charges of the said [*gentleman*], his heirs, executors, administrators, or assigns, and to the like satisfaction of the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, by some deed or instrument in writing, secure an annual sum of pounds of lawful money of Great Britain and Ireland, to be paid out of the interest, dividends, and annual produce of the said sum of money, and the stocks, funds, and securities, in which the same shall be laid out and invested, to the said [*lady*] and her assigns, for the term, and on the days for or upon which the annual sum or yearly rent-charge hereby provided for the said [*lady*], and her assigns, is hereinbefore made payable, or would then continue to be payable under or by virtue of these presents, if the same were not to cease, as hereinafter mentioned, *Then* and in such case, and imme-

Proviso that if gentleman shall invest in the names of two trustees, a competent sum,

and shall secure an annual sum of —*l.* to be paid out of the money invested, for the same term, and in the same manner as rent-charge is limited,

rent-charge shall, (if it has

PROVISION FOR CESSER OF JOINTURE.

not become payable) never become payable; or if it shall have become payable, shall cease.

diately thereupon, the said annual sum or yearly rent-charge hereby provided for the said [*lady*] and her assigns, shall (if the time hereby appointed for the payment of the same shall not have then commenced) never become payable; and if the time hereby appointed for the payment of the same shall have then commenced, shall thenceforth cease, and be no longer payable, anything hereinbefore contained to the contrary notwithstanding: AND it is hereby further agreed and declared between and by the parties to these presents, that in the deed or instrument in writing, whereby the annual sum of pounds is so to be secured in lieu of the annual sum or yearly rent-charge hereby secured, such declarations of trust, clauses, powers, and provisoes, shall be inserted for effectually securing and ascertaining the different rights and interests of the parties in and to the said sum of money, so to be laid out and invested as aforesaid, and the stocks, funds, and securities in which the same shall be so laid out and invested, and the interest, dividends, and annual produce thereof, and for the varying of the securities, and for the changing of the trustees, and for their reimbursement and indemnity, as the person and persons laying out and investing such sum of money, and the said [*trustees*], and the survivor of them, or the executors, administrators, or assigns of such survivor, and their respective counsel in the law, shall think necessary and proper.

Agreement that in the deed settling the sum of —*l.* all proper clauses and provisions shall be introduced.

MARRIAGE SETTLEMENT, *whereby* FREEHOLDS *are Appointed and Released to Gentleman for Life, then to Lady for Life, and afterwards to the Children of the Marriage equally;* COPYHOLDS *are surrendered to Gentleman and Trustees, upon similar Trusts: and* MONIES *secured by Bond are assigned upon Trusts, for the Benefit of Gentleman, Lady, and the Children of the Marriage.* COVENANT *to settle after-acquired Property, upon similar Trusts.*

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

THIS INDENTURE, made the day of , BETWEEN [*father of gentleman*] of, &c. of the first part; [*gentleman*] of, &c. son of the said [*father of gentleman*], of the second part; [*father of lady*] of, &c. and [*lady*] of, &c. spinster, one of the daughters of the said [*father of lady*], by his late wife, of the third part; and [*trustees*] of, &c. (trustees appointed for the purposes hereinafter mentioned), of the fourth part; WHEREAS the said [*lady*] was entitled under the will of her maternal uncle [J.] late of deceased, as well to a sum of money therein particularly mentioned, as also to a fifth share of his residuary personal estate, after satisfaction of his pecuniary legacies given by his said will; AND WHEREAS the said sum of money and share, amounting together to the sum of pounds, have been by her direction and with her consent, paid to her father the said [*father of lady*], who hath executed and given to her the said [*lady*], his bond or obligation in writing bearing date the day of , in the penalty of pounds, conditioned to be void on repayment to the said [*lady*] of the sum of pounds, so paid to him as aforesaid, with lawful interest for the same, on the day of ; AND WHEREAS the said [*lady*] was entitled under the will and codicils of her maternal grandmother, [K.] deceased, formerly of , widow, which bear date respectively the day of ,

Parties.

That lady was entitled to monies under the will of her uncle;

that they have been paid to her father, who has given his bond for them;

that lady is also entitled to a share in a sum of money, due on bond, bequeathed by

FREEHOLDS, COPYHOLDS, AAD PERSONAL ESTATE.

the day of , and the day of , or some or one of them, to one fifth part or share of and in a sum of pounds, in one of the said codicils stated to be secured on the bond of the said [*father of lady*], after payment thereout of pounds, in the manner, and to the persons in the said will and codicils particularly mentioned, and which said fifth share was by the said testatrix directed to be paid to her the said [*lady*] on her attaining the age of twenty-one years, or marrying, whichever should first happen, and the interest of such fifth share to be paid for or towards her maintenance and education in the mean time, and until such share should become payable as aforesaid; AND WHEREAS the said will and codicils of the said testatrix were duly proved in the proper ecclesiastical court by the executors thereof, who have subsequently thereto put the said bond in suit against the said [*father of lady*], and obtained judgment in such suit for the sum of pounds, being the amount of the penalty mentioned in the said bond, which said judgment is still in force; AND WHEREAS the said [*father of lady*] hath, in consideration of the said [*lady*], on her attaining her majority, releasing him from the payment of pounds, being her part or share of and in the sum so recovered as aforesaid against him the said [*father of lady*], executed and given to her the said [*lady*], his bond or obligation in writing, bearing even date herewith, in the penalty of pounds, with a condition thereunder written for making void the same on repayment to the said [*lady*], her executors, administrators, or assigns, of the sum of pounds, on the day of , with lawful interest thereon in the mean time, and until the time of payment thereof; AND WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , the release being made or expressed to be made between [L.] of , of the first part; [M.] of , of the second part; the said [*father of gentleman*] of the third part; and [N.] therein described, of the fourth part; the freehold messuage or tenement, farm, lands, and hereditaments hereinafter described and intended to be hereby limited, appointed, and granted and released, were conveyed and assured to such uses, upon such trusts, and

her maternal grandmother,

which was duly proved;

and the same has been recovered.

That lady's father has given her a second bond, conditioned to secure the sum of —*l.*

Indentures of lease and release, whereby hereditaments are conveyed to such uses as gentleman's father shall appoint, and in default of appointment, to him in fee:

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

to and for such intents and purposes, as the said [*father of gentleman*] should by any deed or writing to be by him sealed and delivered in the presence of, and attested by two or more credible witnesses, direct, limit, and appoint; and in default of such appointment, and so far as any such direction or appointment should not extend, to the use of the said [*father of gentleman*], his heirs and assigns for ever; that gentleman's father has not executed his power; AND WHEREAS the said [*father of gentleman*] hath not at any time heretofore exercised the power of appointment so given to him over the said hereditaments and premises, in and by the said in part recited indenture, but the same and every of them still remain and stand limited to the uses therein expressed; that gentleman's father is entitled to certain copyhold hereditaments. AND WHEREAS the said [*father of gentleman*] stands admitted and is well entitled to the copyhold hereditaments hereinafter covenanted to be surrendered, for an absolute estate of inheritance, at the will of the lord, according to the custom of the manor of , in the county of ; Agreement for marriage, and that gentleman's father should convey the premises to the uses hereinafter mentioned; AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized, between the said [*gentleman*] and [*lady*]; and upon the treaty for the said intended marriage it was agreed that the said [*father of gentleman*] should limit, appoint, convey, and surrender the said freehold and copyhold messuage, farm, lands, hereditaments, and premises hereinbefore referred to, to the uses, upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations and agreements, hereinafter expressed and declared of and concerning the same; *And* it was also agreed that the said [*lady*] should assign and set over the said two several bonds hereinbefore mentioned, bearing date respectively the day of last, and the day of instant, and the principal sums and interest secured thereby, unto the said [*trustees*], upon the trusts, intents, and purposes hereinafter mentioned; and that lady should assign the two bonds; *And* that the said [*gentleman*] and [*lady*] should enter into the covenants hereinafter contained for settling such real and leasehold estates, and share of real and leasehold estates, as she may become entitled to in possession under or by virtue of the said will of the said [F.], or any codicil or codicils thereto, in the manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance and part per- and that lady and gentleman should covenant to settle after-acquired real and personal property contained in will of F. First testatum, whereby gentleman's father appoints,

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

formance of so much of the said agreement entered into upon the treaty for the said intended marriage, as is incumbent on the said [*father of gentleman*] to perform, and in consideration of the said intended marriage, and of the natural love and affection which the said [*father of gentleman*] hath and beareth for and towards the said [*gentleman*] his son, and for making a provision as well for the said [*gentleman*] during his life, and for the said [*lady*] for her life, in case she should survive the said [*gentleman*], her intended husband, as also for the issue of the said intended marriage, in such manner as is hereinafter mentioned, and for settling and assuring the messuage, farm, lands, hereditaments, and premises hereinafter mentioned, and intended to be hereby granted and released, to and for the several uses, intents, and purposes, upon the several trusts, and with, under, and subject to the several powers, provisoes, limitations, declarations, and agreements, hereinafter expressed and declared of and concerning the same, HE the said [*father of gentleman*], pursuant to, and in exercise of the power or authority given or reserved to him in and by the said hereinbefore in part recited indenture of release, and by virtue thereof, and of all and every other powers or power, authorities or authority, in anywise enabling him hereunto, hath directed, limited, and appointed, by this deed or instrument in writing, by him sealed and delivered in the presence of, and attested by the two credible persons whose names are intended to be hereupon indorsed, as witnesses thereto, *Doth* absolutely and irrevocably direct, limit, and appoint, that ALL and singular the messuage or tenement, lands, hereditaments and premises hereinafter described, and mentioned and intended to be hereby released, with their and every of their appurtenances, shall be and remain, and that the said recited indentures of lease and release, and all other assurances of the same hereditaments, or any part or parcel thereof, shall, as to the same hereditaments, be and enure, to the uses, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, limitations, declarations, and agreements, hereinafter limited, declared, or expressed, of or concerning the

the premises hereinafter described,

to the uses hereinafter mentioned.

same: AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance and performance of the said agreement on the part of the said [*father of gentleman*], and for the considerations aforesaid, and also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*father of gentleman*] in hand, at or before the sealing and delivery of these presents, well and truly paid, (the receipt whereof is hereby acknowledged,) HE the said [*father of gentleman*] *Hath* granted, bargained, sold, aliened, released, and confirmed; *And*, &c. unto the said [*trustees*], in their actual possession, &c. (*lease for a year*), and their heirs and assigns, ALL THAT, &c. (*the freehold premises*), *Together* with all houses, outhouses, barns, stables, buildings, &c. (*general words*); *And* the reversion and remainder, &c.; *And* all the estate, &c. TO HAVE AND TO HOLD the said messuage or tenement, farm, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, unto the said [*trustees*], their heirs and assigns, to and for the several uses, intents, and purposes, and upon the several trusts, and under and subject to the several powers, provisoes, limitations, declarations, and agreements, hereinafter limited, declared, and expressed, of and concerning the same (that is to say); in the mean time, and until the said intended marriage shall be had and solemnized, *To such uses* as the same stood limited, immediately before the sealing and delivery of these presents; and from and immediately after the solemnization of the said intended marriage, *To the use* of the said [*gentleman*] and his assigns, for and during the term of his natural life, without impeachment of waste, subject nevertheless to the powers and provisoes hereinafter contained for securing to the said [*lady*] his intended wife, during her coverture, the annual payment of pounds, as and for pin money; *And* from and after the determination of that estate by forfeiture or otherwise, in the life-time of the said [*gentleman*], *To the use* of the said [*trustees*], and their heirs, for and during the life of the said [*gentleman*], *Upon trust*, to preserve the contingent

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

Second testatum, whereby father of gentleman releases

parcels.

Habendum to trustees, to the uses and upon the trusts hereinafter mentioned:

until the marriage, to such uses as subsisted before the marriage, and then to the use of gentleman for life;

remainder to the use of trustees to preserve;

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries, and to bring actions, as the occasion shall require; but nevertheless to permit and suffer the said [*gentleman*] and his assigns, (subject as aforesaid) to receive and take the rents, issues, and profits of all and singular the same premises, to and for his and their own use and benefit, during his life; *And* from and after the decease of the said [*gentleman*], in case the said [*lady*] his intended wife shall survive him, then *To the use* of the said [*lady*] and her assigns, for and during the term of her natural life, without impeachment of waste; *And* in case there shall be any child or children of the said [*gentleman*], on the body of the said [*lady*] to be begotten, then after the decease of the survivor of them the said [*gentleman*] and [*lady*] his intended wife, *To the use* of such one child, or of such two or more children, whether male or female, of the said [*gentleman*] and [*lady*], in such parts, shares, and proportions, and for such estate and estates, and in such sort and manner, as they the said [*gentleman*], and [*lady*], his intended wife, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of two or more credible witnesses, or as the survivor of them, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by him or her sealed and delivered in the presence of, and attested by two or more witnesses, or by his or her last will and testament, to be by him or her signed and published in the presence of three or more credible witnesses, shall direct, limit, and appoint, such several and respective directions, limitations, and appointments, from time to time, to be made for the benefit of some one or more child or children, by the said [*gentleman*] and [*lady*]; and for want of such direction, limitation, or appointment, *To the use* and behoof of all and every the child and children of the said [*gentleman*], and [*lady*] his intended wife, to be equally divided between or among them, if more than one, share and share alike, and they to take as tenants in common, and not as joint tenants, and of the several and respective heirs of the body and bodies of all and every

remainder (if lady shall survive gentleman) to the use of lady for her life;

remainder to the use of the children of the marriage, in such manner as gentleman and lady shall appoint;

and in default of such appointment, to the use of all the children equally in fee, with cross remainders;

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

such child and children lawfully issuing; and in case there shall be a failure of issue of any one or more of such children, then as well as to the original share or shares of, as the share or shares surviving or accruing to such last mentioned child or children, as his, her, or their issue, *To the use* of all and every other the child or children of the said [*gentleman*] and [*lady*], equally to be divided between or among them, if more than one, share and share alike, as tenants in common, and not as joint tenants, and of the several and respective heirs of their bodies issuing; *And* in case all such children but one shall happen to die without issue, or if there shall be but one such child, then *To the use* of such surviving or only child, and the heirs of his or her body lawfully issuing; *And* for default of such issue, then *To the use* of the said [*gentleman*], his heirs and assigns for ever: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the aforesaid agreement, with respect to the copyhold premises of the said [*father of gentleman*], and in order to effectuate the same, and for the considerations aforesaid, and also for and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, to the said [*father of gentleman*], in hand well and truly paid by each of them the said [*trustees*], (the receipt whereof is hereby acknowledged,) HE the said [*father of gentleman*], for himself, his heirs, executors, and administrators, doth hereby COVENANT, agree, and declare, with and to the said [*trustees*], their heirs and assigns, that he the said [*father of gentleman*], shall and will at the next general customary court, or at some special court to be previously holden for the manor of aforesaid, at his own costs and charges, surrender or cause to be surrendered, all and singular the copyhold or customary hereditaments hereinafter described, that is to say; ALL, &c., according to the custom of the said manor, with the appurtenances, into the hands of the lord of the said manor, in due form, *To the use* of the said [*gentleman*] and his assigns for his life; and from and after his decease, *To the use* of the said [*trustees*], their heirs and assigns, upon such trusts, and to and for such uses, intents, and purposes, and under and subject to such powers, provisoes, limitations, and declarations, as will

and if there shall be but one such child, to the use of that one in fee.

Third testatum, whereby gentleman's father covenants with trustees to surrender copyholds,

To the use of gentleman for life; remainder to the use of trustees, upon trusts which will nearest correspond

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

best and nearest correspond and agree with the uses, trusts, powers, provisoes, limitations, and declarations, in and by these presents limited and created, declared, or expressed, respecting the freehold hereditaments and premises hereby limited and appointed, and granted and released, or mentioned and intended so to be; AND the said [*gentleman*], for himself, his heirs, executors, and administrators, *Doth* hereby covenant, agree, and declare, with and to the said [*trustees*] and their heirs, that he the said [*gentleman*] shall and will, at the next court to be holden for the said manor of as aforesaid, immediately after the said [*father of gentleman*] his father, shall have surrendered the same premises to the uses hereinbefore expressed, cause himself to be duly admitted tenant, at his own proper expense and costs, and shall and will pay such fine or fines upon such admission, as persons admitted tenants to the same premises in fee-simple, ought of right to pay, according to the custom and usage of the said manor, so and to the intent, that the remainder in fee of and in the said premises, may on such admission become fixed and vested in the said [*trustees*] and their heirs, without any occasion for them or any or either of them to be admitted thereto, on the determination of the estate for life of the said [*gentleman*], or to pay any fine or fines on their accession to the same; *And* also that he the said [*gentleman*] shall and will, at such next court, at his own costs and charges as aforesaid, cause and procure, or endeavour to cause and procure, the declaration of the trusts hereby, or intended to be hereby created, of the said copyhold hereditaments, to be properly entered and inserted in the court rolls of the said manor of , to the end and intent, that the same trusts, and the intent of the several parties to these presents, may be more easily ascertained and provided: PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by the several parties to these presents, that it shall and may be lawful for the said [*trustees*], their heirs and assigns, immediately after the solemnization of the said intended marriage, and thenceforth during the said intended coverture between the said [*gentleman*] and [*lady*], to receive and take one annual sum or yearly rent-charge of pounds, of lawful money of Great Britain and Ireland, to be

with the uses declared of the freeholds.

Covenant by gentleman that on the surrender of the premises, he will cause himself to be admitted,

and pay the fine due thereon, as if he was tenant in fee,

so that the trustees need not be admitted,

and will endeavour to have the trusts of the settlement inserted on the rolls.

Power to the trustees to take an annual sum, to be paid quarterly to lady,

charged and chargeable upon, and yearly issuing and payable out of the said messuages, &c., hereby appointed, granted, and released, to be paid quarterly into the proper hands of the said [*lady*], or her assigns, during her coverture with the said [*gentleman*], her said intended husband, on the most usual days of payment in the year, (that is to say), the twenty-ninth day of September, the twenty-fifth day of December, the twenty-fifth day of March, and the twenty-fourth day of June, without any deduction or abatement whatsoever, the first quarterly payment to be made on the twenty-fifth day of December next ensuing the date of these presents; *And* further, that it shall be lawful for the said [*trustees*], their heirs and assigns, when and so often as the said annual sum or yearly rent-charge of pounds, or any part thereof, shall at any time or times be unpaid by the space of forty days, next after any of the days hereby appointed for the payment thereof, as aforesaid, to enter into, and distrain upon the same premises, and to dispose of the distress or distresses then and there found, according to law, to the intent that thereby or otherwise the said annual sum or yearly rent-charge of pounds, and every part thereof, so in arrear and unpaid, and all costs, charges, and expenses, occasioned by reason of the non-payment thereof, shall be fully paid and satisfied; And it is hereby further agreed and declared between and by the said parties to these presents, that the receipt and receipts of the said [*lady*], notwithstanding her coverture, shall be a sufficient discharge or sufficient discharges to the said [*trustees*], their heirs and assigns, for so much money as shall in such receipt or receipts be expressed to be received; Provided always, and it is hereby declared to be the true intent and meaning of these presents, and of the said parties, that it shall and may be lawful to and for the said [*gentleman*], during his life, and after his decease, for the said [*lady*], his said intended wife, during her life, and after the decease of the survivor of them the said [*gentleman*] and [*lady*], for the said [*trustees*], and the survivors and survivor of them, and the heirs and assigns of such survivor, during the minority or respective minorities of the child or children of the said [*gentleman*] and [*lady*], who, by virtue of the limitations, or powers afore-

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

with power of entry and distress, if it shall be in arrear for forty days.

Receipts of lady to be sufficient discharges.

Power to gentleman during his life, to lady for her life, and for trustees during minority of children, to lease freeholdsand copyholds for 21 years.

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

said, shall be entitled to the immediate freehold of the said freehold hereditaments, from time to time, by indenture, to make any demise or lease, demises or leases, of the said messuage or tenement, farm, lands, hereditaments, and premises respectively mentioned to be hereby limited and appointed, granted and released, and covenanted to be surrendered, or of any part or parts thereof, (in which lease or leases of the said copyhold hereditaments, the said trustees or trustee for the time being, shall and may join and concur, if thereunto required), to any person or persons, for any term or number of years, not exceeding twenty-one years, to take effect in possession and not in reversion, or by way of future interest, so as upon every such lease or demise to be made as aforesaid, there be reserved to continue due and payable, during the continuance thereof, to be incident to, and go along with the reversion or remainder expectant on such lease or leases, the best and most improved yearly rent or rents that can reasonably be had and obtained for the same at the time of making such lease or leases, demise or demises, without taking any fine or premium for or in respect of the making of such lease or leases, and so as in all and every such lease or leases, demise and demises, there be contained a condition or clause of re-entry, in case the rent or rents thereupon to be reserved, be behind or unpaid by the space of twenty-one days after any of the days or times when such rent or rents ought to be paid, (whether the same shall have been legally demanded or not), and so as none of the respective lessees be, by any clause or words therein contained, freed from impeachment of, or made dispunishable for waste, and so as the respective lessees, to whom such lease or leases shall be made as aforesaid, do seal and deliver counterparts of such leases respectively: (*Powers of sale and exchange, as ante, p.* 25; *Covenants for title by father of gentleman, as ante,* Vol. VI. 277, Vol. VII. *p.* 447). AND THIS

Fourth testatum, whereby lady assigns

INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the aforesaid agreement, and in consideration of the sum of five shillings by the said [*trustees*] to the said [*lady*] in hand paid, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), SHE the said [*lady*], with the consent of the said

[*gentleman*], her said intended husband, (testified by his being a party to, and sealing and delivering these presents,) *Hath* bargained, sold, assigned, transferred, and set over, and by these presents, *Doth* bargain, sell, assign, transfer, and set over, unto the said [*trustees*], their executors, administrators, and assigns, *All* those two several bonds so entered into as aforesaid, by the said [*father of lady*], and bearing date respectively the day of , and the day of , and the said principal sums of money and interest secured thereby respectively, and all benefit and advantage to be had or taken from them or either of them; TO HAVE, HOLD, RECEIVE, TAKE, AND ENJOY, the said two several bonds, sums of money and interest, and premises, hereby assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, or assigns; *Upon* the trusts, and for the intents and purposes, hereinafter expressed, declared, and contained, of and concerning the same; *And* the said [*gentleman*] and [*lady*], *Do*, and each of them *Doth* hereby give and grant full power and authority to the said [*trustees*], and the survivors and survivor of them, his executors and administrators, to use the name or names, and act as the attorney or attornies of them the said [*gentleman*], and [*lady*] his said intended wife, or either of them, their, or either of their executors or administrators, in recovering and enforcing the payment of the said bonds, and of the said principal sums of money and interest secured thereby respectively, and in giving effectual discharges for the same, without any obligation, by the person or persons paying the same, to see to the application thereof, or be answerable for misapplication or nonapplication of the same, according, or contrary to the trusts hereinafter declared concerning the same; AND it is hereby agreed and declared between and by the said parties to these presents, that they the said [*trustees*], and the survivors and survivor of them, his executors and administrators, shall stand and be possessed of and interested in, or entitled to the said recited bonds or obligations hereby assigned, and the principal sums of money and interest secured thereby respectively, *In trust* for the said [*lady*], until the said intended marriage shall be duly

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

the two bonds,

upon the trusts hereinafter declared.

Power of attorney from lady and gentleman to trustees, to collect and receive the monies secured by the bonds.

Declaration that trustees shall stand possessed of the bonds in trust for lady until marriage, and then to call in the monies thereby secured,

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

had and solemnized; *And* that they the said [*trustees*], their executors and administrators, from and immediately after the solemnization of the said intended marriage, do and shall, as soon as may be, call in and receive the said sums of pounds and pounds so as aforesaid secured by the said recited bonds or obligations, and lay out and invest the same in their or his own names or name, in or upon some or one of the government stocks or public funds of Great Britain, or in some good and sufficient mortgage or mortgages of lands of inheritance in fee simple, to be situate in some convenient part of England, free from incumbrances, except quit or other small rents, or other trifling outgoings; *And* from time to time, when and so often as occasion shall be or require, call in and receive the monies so to be laid out and invested, and give receipts for the same, which receipts shall be sufficient discharges, and again lay out and invest the same upon some other security or securities of the like nature; *And upon this further trust,* that they the said [*trustees*], and the survivors and survivor of them, his executors and administrators, do and shall pay the interest, dividends, and annual produce arising from the said monies so to be laid out and invested as aforesaid, as well before as after they shall be actually so laid out and invested, unto, or otherwise permit and suffer the same to be had, received, and taken by, the said [*gentleman*] and his assigns, during his life: PROVIDED NEVERTHELESS, that in case the said annual sum or yearly rent-charge of pounds hereinbefore intended to be secured for the benefit of the said [*lady*], by way of pin money, during the said intended coverture, shall be behind or unpaid by the space of thirty days next after any of the said days whereon the same ought to be paid as aforesaid, *Then,* and in every such case, and as often as the same shall happen, the said [*trustees*], and the survivors and survivor of them, and the executors and administrators of such survivor, shall retain such arrears out of the said dividends, interest, and annual proceeds, and pay the same to the said [*lady*], for her own separate use and benefit, in manner aforesaid, and for which her receipt shall be a sufficient discharge; *And* after the decease of the said [*gentleman*], in case the said

and lay out and invest the same in government or real securities,

and vary the securities,

and pay the dividends thereof to gentleman for his life.

Proviso that if lady's pin-money shall be in arrear for 30 days, sufficient of the interest shall be retained to satisfy it,

and after gentleman's de-

[*lady*] shall survive him, do and shall pay the interest, dividends, and annual produce of the said monies, whether actually invested or not, as aforesaid, unto, or otherwise permit and suffer the said [*lady*], and her assigns, during her life, to receive and take the same for her own sole and separate use, whether she shall be sole or married, and not to be subject to the debts, control, or engagements of any after taken husband, but her receipts alone, notwithstanding her coverture, to be sufficient discharges for the same, or so much thereof as shall be expressed to be received; *And* from and after the decease of the said [*gentleman*] and [*lady*] his said intended wife, *Then*, upon trust, that they the said [*trustees*], and the survivors and survivor of them, his executors and administrators, do and shall stand possessed of and interested in the said trust monies, and the stocks and securities wherein the same may be invested, *In trust* for all and every the children of the said [*gentleman*] and [*lady*] his intended wife, or any such one or more of them exclusively of the rest, in such parts, shares, and proportions, and in such manner and form, and the part or parts, share or shares of such child or children, to vest and be paid at such days and times, and subject to such provisoes, conditions, and limitations over, such limitations to be for the benefit of some or one of such children, as they the said [*gentleman*] and [*lady*], at any time, by any deed or writing under their respective hands and seals, attested by two or more witnesses, shall jointly direct, limit, or appoint; and in default or for want of such joint direction, limitation, or appointment, then as the survivor of them the said [*gentleman*] and [*lady*], by any deed or writing under his or her hand and seal, attested by two or more witnesses, or by his or her last will and testament, or any codicil thereto, to be signed and published by such survivor, in the presence of, and attested by the like number of witnesses, shall direct, limit, or appoint; and in default of any such direction, limitation, or appointment as aforesaid, or in case any such shall be, then as to all such part or share or interest in the said trust monies as shall not be appointed or disposed of by any such joint or other direction, limitation, or appointment as aforesaid, *Upon trust* that they the said

cease to pay interest to lady;

and after decease of gentleman and lady,

Upon trust for such children of the said marriage as parents shall appoint;

and in default of the joint appointment, as survivor shall appoint;

and in default of such last-mentioned appointment,

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

[*trustees*], and the survivors and survivor of them, his executors and administrators, or other the trustee or trustees thereof, do and shall pay, transfer, and set over the same trust monies, and the stocks and securities wherein the same may be invested, unto and amongst all and every the child and children of the said [*gentleman*] and [*lady*] his intended wife, equally to be divided between or among them, if more than one, share and share alike, and if but one, then the whole thereof to such one child; such share and shares to belong to, and be an interest vested in such child or children, being a son or sons, at his or their age or respective ages of twenty-one years, or being a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, and to be paid, transferred, or assigned, to such child or children respectively, at the said ages, days, or times, if such ages, days, or times happen after the decease of the said [*gentleman*] and [*lady*] his intended wife, but if before, then within three calendar months next after the decease of the survivor of them the said [*gentleman*] and [*lady*] his intended wife, with the interest then thereupon due, or to become due after the decease of such survivor; (*Provisoes for survivorship and hotchpot*, Vol. VII. *p.* 572). PROVIDED ALWAYS, and it is further declared and agreed between and by the said parties to these presents, that in case there should not be any child by the said [*gentleman*] and [*lady*] his intended wife, who shall live to become entitled to the said trust-monies or securities under the trusts aforesaid, then they the said [*trustees*], or the survivors and survivor of them, his executors and administrators, shall and do from and after the decease of the said [*gentleman*], in case the said [*lady*] his intended wife shall survive him, pay, transfer, and make over the said trust-monies or securities, or so much thereof as shall not have been applied or disposed of, under and in pursuance of the trusts or powers herein contained, unto the said [*lady*], her executors, administrators, and assigns, for her and their own use and benefit; but in case the said [*lady*] shall die in the life-time of the said [*gentleman*], then do and shall after the decease of the said [*gentleman*],

unto all the children equally.

Proviso, if there shall be no children of the marriage, then, after decease of gentleman, if lady shall survive him, upon trust to pay over trust-monies to lady;

but if lady shall die first, then to such persons as lady shall direct;

pay, transfer, and make over the same to such person or persons, for such estate or estates, interest or interests, and in such parts, shares, proportions, manner and form, upon such trusts, and under and subject to such powers, limitations, and declarations, as the said [*lady*], by her last will and testament in writing, or any writing in the nature of or purporting to be her last will and testament, or any codicil or codicils thereto, (which she is hereby authorised and empowered to make notwithstanding coverture,) to be by her signed and published in the presence of and attested by two or more credible witnesses, shall direct, limit, or appoint, and in default of such direction, limitation, or appointment, and subject to any incomplete direction, limitation, or appointment, and as to such of the premises to which no such direction, limitation, or appointment shall extend, do and shall, after the decease of the said [*gentleman*], pay, transfer, and make over the same, unto the eldest brother for the time being of her the said [*lady*], whether of the whole or half blood, living at the decease of the said [*gentleman*], his executors, administrators, and assigns: PROVIDED ALWAYS, and it is hereby expressed, agreed, and declared, by and between all the parties to these presents, that it shall and may be lawful to and for the said [*trustees*], and the survivors and survivor of them, his executors and administrators, after the respective deceases of them the said [*gentleman*] and [*lady*] his intended wife, to pay, apply, and dispose of, as well the rents, issues, and profits of the said freehold and copyhold messuages, &c., hereby appointed, granted, and released, and covenanted to be surrendered, as the interest, dividends, and annual proceeds of the said trust-monies, funds, and securities, for and towards the maintenance and education, or otherwise for the benefit and advantage of the child or children of the said intended marriage, in such parts, shares, and proportions, as they shall severally and respectively be entitled or presumptively be entitled to the freehold and copyhold estates, monies, funds and securities, from or in respect of which such rents, issues, profits, dividends, interest, and annual proceeds shall arise or become payable: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall and may be lawful to and for the said [*trustees*], and the survivors and survi-

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

and in default of appointment, after gentleman's death to pay trust-monies to lady's eldest brother for the time being.

Proviso for maintenance of children out of rents and dividends.

Proviso for advancement of children out of their shares.

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

vor of them, and the executors and administrators of such survivor, at any time or times after the decease of the survivor of them the said [*gentleman*] and [*lady*], at the discretion, and of the proper authority of the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or during the lives or life of the said [*gentleman*] and [*lady*], or the survivor of them, if they or the survivor of them shall so direct or appoint in writing under their hands and seals, or the hand and seal of the survivor of them, every such writing to be attested by two or more credible witnesses, to raise and advance a competent part, or competent parts of the portion, share, or shares, or presumptive or expectant portion, share, or shares, of all or any one or more of the sons, or of an only son of the said [*gentleman*] by the said [*lady*], of and in all or any part of the trust-monies, funds, and securities, for or towards the preferment or advancement in the world or benefit of such son and sons respectively, notwithstand- the minority or minorities of such son or sons, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding, but so as that during the life of the said [*lady*], no more than a moiety of the presumptive or expectant portion or portions of any such son or sons be so advanced: AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement on the part of the said [*gentleman*] and [*lady*], and for the considerations aforesaid, HE the said [*gentleman*], for himself, his heirs, executors, administrators, and assigns, and the said [*lady*], for herself, her heirs, executors, and administrators, *Do* hereby severally COVENANT, promise, and agree, with and to the said [*trustees*], their heirs, executors, administrators, and assigns, in manner following, (that is to say); that in case the said intended marriage shall take effect, and the said [*lady*], or the said [*gentleman*], in her right, at any time during the life of the said [*lady*], or the said [*gentleman*], in her right, as her personal representative after her decease, shall become seised of, or entitled to any real estate, or leasehold estate, for any estate or interest in possession, under or by virtue of the said will of the said [F.] deceased, or any codicil or codicils thereto, then, and in such case, they the said

Fifth testatum, whereby gentleman and lady covenant that if lady, or gentleman in her right, shall become entitled to any property under a certain will, then that they will, within three months after they shall become entitled, effectually convey it to the trustees:

[*gentleman*] and [*lady*], or the said [*lady*] alone, in case she shall survive the said [*gentleman*], or the said [*gentleman*], after her decease, if he shall become so entitled, as aforesaid, shall and will, within the space of three calendar months next after she the said [*lady*], or the said [*gentleman*], after her decease, if he shall become so seised or entitled in possession, by such good and sufficient fines, recoveries, conveyances, assignments, and assurances in the law whatsoever, as they the said [*trustees*], or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, or their or any of their counsel, shall advise and approve of, well and effectually and absolutely convey, settle, assure, assign, and make over, all such real and leasehold estates, and shares of real and leasehold estates, according to the nature and quality thereof respectively, so as that the same may become well and effectually and absolutely vested in the said trustees, or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, *Upon* and for the several trusts, ends, intents and purposes, hereinafter mentioned, (that is to say); as to, for, and concerning the said leasehold estates and shares of leasehold estates, *Upon* such trusts, and to and for such ends, intents, and purposes, and with, under, and subject to such powers, provisoes, limitations, declarations, and agreements, as are hereinbefore limited, declared, expressed, and contained, of and concerning, and with respect to the said monies so secured by the aforesaid bonds as aforesaid, and the stocks, funds, and securities, in or upon which the same monies are hereinbefore directed to be invested, as aforesaid; *And* as to, for, and concerning the said real estates and shares of real estates, upon trust to convey, settle, and assure the same *To* such uses, upon such trusts, and to and for such intents and purposes, and with, under, and subject to such powers, provisoes, limitations, declarations, and agreements, for the benefit of the said [*gentleman*] and his assigns, for his life, and of the said [*lady*] and her assigns, for her life, and after the decease of the survivor of them, for the benefit of the issue of the said intended marriage, and with such powers of appointment to or between, or amongst the child or children of the said in-

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

as to the leaseholds, upon the trusts hereinbefore declared of the monies secured by the bonds;

and as to the real estate, to such uses as are hereinbefore declared concerning the freeholds;

FREEHOLDS, COPYHOLDS, AND PERSONAL ESTATE.

tended marriage, as are hereinbefore limited, declared, or expressed of and concerning the said freehold messuage, &c. hereinbefore appointed, granted, and released as aforesaid; *And* for default of all such issue, *To the use* of the said [*lady*], her heirs and assigns for ever, in case she shall survive the said [*gentleman*], her said intended husband; but in case she shall die in his life-time, *To the use* of such person or persons, for such estate or estates, interest or interests, and in such parts, shares, and proportions, manner, and form, upon such trusts, and under and subject to such powers, provisoes, limitations, and declarations, as the said [*lady*], by her last will and testament in writing, or any writing in the nature of, or purporting to be her last will and testament, or any codicil or codicils thereto, (which she is hereby authorized and empowered to make notwithstanding coverture,) to be by her signed and published in the presence of and attested by three or more credible witnesses, shall direct, limit, or appoint; *And* in default of such direction, limitation, or appointment, and subject to any incomplete direction, limitation, or appointment, and as to such of the premises to which no such direction, limitation, or appointment shall extend, *To the use* of the eldest brother for the time being of her the said [*lady*], whether of the whole or half blood, living at the decease of the said [*lady*], and of his heirs and assigns for ever; *And* it is hereby agreed and declared, that in such settlement to be made as aforesaid, shall be contained such or the like powers of leasing, and of sale and exchange, and other powers, as are in and by these presents contained, declared, and expressed of and concerning the freehold hereditaments hereinbefore mentioned to be hereby released, and also a power of partition, and such other powers, not inconsistent with the spirit and intent of such settlement, as by the said [*trustees*], or the survivors or survivor of them, or the heirs or assigns of such survivor, shall be deemed expedient or advisable. (*Trustee clauses, as ante*, Vol. VII. *p.* 446.) IN WITNESS, &c.

and in default of issue of the marriage, to lady in fee, if she shall survive gentleman;

but if she shall die before, to the use of such person as lady shall appoint;

and in default of appointment, To the use of eldest brother of lady in fee.

Necessary clauses to be inserted in settlement.

MARRIAGE SETTLEMENT *of Real and Personal Property:* First Witnessing Part, *whereby Father of Gentleman covenants for Payment of Annuity, during Joint Lives of Himself and Wife, to Gentleman, until he shall become Bankrupt; and then to Lady for her Separate Use; and after Gentleman's Decease, to Lady; and after the Decease of the Survivor of them, the Gentleman and Lady, to Children of the Marriage, as Parents shall appoint, and in Default of Appointment, as Trustees shall think fit: Proviso for Cesser of Annuity*; Second Witnessing Part, *whereby Hereditaments are conveyed by Gentleman's Father and Mother to Trustee, upon Trust to secure the Annuity; Covenant to levy a Fine* sur concesserunt, *to the Use of Trustees, upon Trusts to secure the Payment of the Annuity:* Third Witnessing Part, *whereby Gentleman covenants to settle a Part of his Portion, when he comes into its Possession, Upon Trusts for the Benefit of Gentleman, Lady, and the Children of the Marriage.*

WHEREBY ANNUITY IS GRANTED, &c.

THIS INDENTURE, made the day of , BETWEEN [*father of gentleman*] of, &c. and [F. A.], his wife, of the first part; [*gentleman*] of, &c. of the second part; [*father of lady*] of, &c. of the third part; [*lady*] of, &c. spinster, (daughter of the said [*father of lady*],) of the fourth part; and [*trustees*] of, &c. of the fifth part: WHEREAS by indentures of lease and release, bearing date respectively the and days of , and made, or expressed to be made, between [C. B. T.], therein described, of the first part; the said [*father of gentleman*], and [F. A.] his wife, of the second part; [R. M.] and [T. P.], therein respectively described, of the third part; [T. P. B.], [J. W.], and [T. H.], of the fourth part; and the [Rev. R. S. S.] and [E. T.], therein also described, of the fifth part, (being

Parties.

Recital of indentures, whereby hereditaments are limited,

WHEREBY ANNUITY IS GRANTED, &c.

ent executed subsequent to the marriage of the said [*father of gentleman*] and [F. A.], his wife, in pursuance of prior articles for that purpose); the manors or lordships, messuages or tenements, farms, lands, hereditaments and premises, hereinafter described, and intended to be hereby granted and released, with the appurtenances, (amongst and together with other hereditaments) were (in consideration of the marriage, which had been duly had and solemnized between the said [*father of gentleman*], and [F. A.], his wife), conveyed by the said [C. B. T.] (subject as therein mentioned), amongst other uses and estates, *To the use* of the said [*father of gentleman*], for the term of his life; remainder *To the use* of the said [T. P. B.], [J. W.], and [T. H.], and their heirs, during the life of the said [*father of gentleman*], *Upon trust* to preserve contingent remainders; remainder *To the use* of the said [F. A.], for the term of her life; remainder *To the use* of the said [R. S. S.] and [E. T.], their executors, administrators, and assigns, for the term of five hundred years, with remainder *To the use* of the first and other sons of the said [*father of gentleman*] by the said [F. A.] in tail male successively, with remainders over; *And* it was by the said indenture of release declared, that the said term of five hundred years was thereby limited to the said [R. S. S.] and [E. T.], their executors, administrators, and assigns, upon the trusts therein mentioned, for raising by mortgage, sale, or other disposition of the premises comprised in the said term, the sum of seven thousand pounds, for the portions of all the children of the said [*father of gentleman*], by the said [F. A.], his wife, (other than an eldest son, for the time being, who should become tenant in tail in possession, or next in remainder, upon the death of the survivor of them the said [*father of gentleman*] and [F. A.], his wife, of the said hereditaments and premises), and should pay and divide the said sum of seven thousand pounds among such children (except as aforesaid), in such shares and manner as the said [*father of gentleman*], and [F. A.], his wife, should by any deed to be executed by them, in such manner as therein is mentioned, jointly appoint; and in default of such direction or appointment, as in the said indenture of release and settlement is mentioned; *And* in the same indenture,

To the use of father of gentleman for life;

remainder to his wife for life;

remainder to trustees for 500 years;

remainder to the sons in tail male.

Declaration that the term of 500 years is limited to trustees to secure 7000*l.* for portions for younger children.

were contained the usual provisions for the maintenance and advancement of the said younger children; AND WHEREAS by a deed poll or instrument in writing, bearing date the day of , under the hands and seals of the said [*father of gentleman*], and [F. A.], his wife, the said [*father of gentleman*], pursuant to, and by virtue of the power or authority so given them by the said hereinbefore recited indenture of the day of as aforesaid, directed and appointed that the said sum of seven thousand pounds, so directed to be raised as aforesaid, should, after the decease of the survivor of them, the said [*father of gentleman*], and [F. A.] his wife, be paid and divided unto and amongst all and every the children and child then born, or thereafter to be born, (other than and besides an eldest son for the time being, who should become tenant in tail in possession, or next in remainder, expectant upon the death of the survivor of them the said [*father of gentleman*] and [F. A.] his wife, not having attained the age of twenty-one years) in equal shares and proportions, the shares of such of them who were or should be sons, to be interests vested in them respectively at their respective ages of twenty-one years; *And* the shares of such of them as are or should be daughters, to be interests vested in them respectively, at their respective ages of twenty-one years, or days of marriage, which should first happen, and to be paid, transferred, and assigned to them respectively on or at the like ages, days, or times, if the same should happen after the decease of the survivor of them, the said [*father of gentleman*], and [F. A.] his wife; but if the same should happen in their or his life-time, then within six months after the decease of such survivor, with interest for the same, after the rate of four pounds per cent. per annum, from the decease of such survivor; *And* in the said deed poll now in recital, were contained the usual provisions for survivorship, and accruer of the shares of the said children of the said [*father of gentleman*], by the said [F. A.] his wife, and for the advancement of the said younger children, out of their shares; AND WHEREAS there are now seven younger children of the said [*father of gentleman*], by the said [F. A.], of whom the said [*gentleman*] is the eldest; AND WHEREAS a marriage

WHEREBY ANNUITY IS GRANTED, &c.

Deed-poll, whereby gentleman's father and mother appoint that the sum of 7000*l.* should be paid amongst the younger children equally.

That there are now seven younger children.

Agreement for marriage.

WHEREBY ANNUITY IS GRANTED, &c.

hath been agreed upon, and is about to be had and solemnized, between the said [*gentleman*] and [*lady*]; AND WHEREAS upon the treaty for the said marriage, it was agreed that the said [*father of gentleman*], should covenant to pay an annuity, or yearly sum of pounds of lawful money of Great Britain and Ireland, during the lives of the said [*father of gentleman*] and [F. A.] his wife, and of the survivor of them, to the said [*trustees*], their executors and administrators, *Upon* trust for the said [*gentleman*] and [*lady*], and the children of the said intended marriage, in the manner hereinafter mentioned, and that the payment thereof should be secured by a conveyance of the said manors or lordships, messuages or tenements, farms, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, with the appurtenances, to the said [*trustees*] and their heirs, in the manner hereinafter mentioned; AND WHEREAS it was also agreed upon the treaty for the said marriage, that the said [*gentleman*] should (*a*) covenant to assign and make over the sum of pounds, from and out of the sum of seven thousand pounds, to which he is entitled, under the hereinbefore recited deed poll, or out of any other sum to which he may by deed or will, or in any other manner whatsoever, become entitled, within one month after he shall become possessed thereof, or entitled thereto, to the said [*trustees*], upon the trusts and in the manner hereinafter mentioned; AND WHEREAS the said [*lady*] is possessed of, or entitled to the sum of two thousand pounds, and it hath been agreed that the same should be settled for the benefit of herself, and the said [*gentleman*], and the younger children of the said marriage, in the manner expressed and declared by an indenture bearing even date with, and made or expressed to be made between the same persons, as are parties to these presents, as she the said [*lady*] doth hereby admit and acknowledge; AND WHEREAS, it hath also been agreed that the said [*father of lady*]

Agreement that father of gentleman should covenant to pay annuity, during their lives to trustees, upon trust for gentleman and lady and the children of the marriage; and that the same should be secured by the conveyance of hereditaments.

Agreement that gentleman should assign pounds, out of the sum to which he is entitled, within one month after he shall become possessed of the same.

that lady was possessed of —*l.*, and agreement to settle the same.

Agreement to pay annuity, and to charge

(*a*) The interest of the gentleman under the appointment was revocable by his parents; so that an absolute assignment could not be taken, although it was not thought necessary, under the circumstances, to mention this in the deed.

should covenant to pay an annuity, or yearly sum of pounds, for the term of his life, to the said [*trustees*], their executors, administrators, and assigns, upon trusts for the benefit of the said [*gentleman*] and [*lady*], and the children of the said marriage, and should secure the payment thereof by a charge upon such hereditaments, and in such manner, as is expressed and declared by an indenture of even date with, and made or expressed to be made between the same persons as are parties to these presents, as the said [*father of lady*] doth hereby admit and acknowledge: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement on the part of the said [*father of gentleman*], and [F. A.], his wife, and in consideration of the said marriage, and the settlement to be made of the said sum of two thousand pounds, and of the charge of the said annuity, or yearly sum of pounds, as hereinbefore is mentioned; HE the said [*father of gentleman*], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, that he the said [*father of gentleman*], shall and will, during the term of his natural life, and that the said [F. A.] his wife, shall and will, after the decease of him the said [*father of gentleman*], and during the then remainder of her natural life, well and truly pay to the said [*trustees*], or the survivor of them, and the executors, administrators, and assigns of such survivor, one annuity or yearly sum of pounds, of lawful money of Great Britain and Ireland, by two equal half-yearly payments, on the day of , and the day of , the said annuity or yearly sum of pounds, to be paid in the common Dining Hall of Lincoln's Inn, between the hours of ten and two in the day, free and clear of and from all taxes and deductions whatsoever, and the first payment thereof to be made on the day of now next ensuing; *And* if the said [*father of gentleman*], or the said [F. A.], his wife, shall happen to depart this life on any other day than one of the said days, that the heirs, executors, and administrators of the said [*father of gentleman*], and [F. A.] his wife, shall and will, within one calendar month next after his or her decease, well and

WHEREBY ANNUITY IS GRANTED, &c.

the same upon certain hereditaments.

Covenant to pay the annuity by father of gentleman during his life and the life of his wife, to trustees,

and a proportional part.

WHEREBY ANNUITY IS GRANTED, &C.

truly pay, or cause to be paid unto the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, a proportional part of the said annuity, or yearly sum of pounds, from the day of payment next preceding the death of the survivor of them the said [*father of gentleman*], and [F. A.] his wife, or from the day of the date of these presents, up to, and until the day of his or her death respectively; AND it is hereby agreed and declared between and by the parties hereto, that the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of, and interested in the said annuity, or yearly sum of pounds, upon the trusts, and for the intents and purposes, and under and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed and declared of and concerning the same, that is to say; *Upon trust* that the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, until the said [*gentleman*] shall assign, charge, or otherwise dispose of the said annuity, or yearly sum of pounds by way of anticipation, or attempt, or agree so to do, or shall become bankrupt or insolvent, or do some act whereby the same, if payable to himself, would become vested in some other person or persons, pay the said annuity or yearly sum of pounds to the said [*gentleman*], for his own proper use and benefit; but if the said [*gentleman*] shall assign, charge, or otherwise dispose of the said annuity or yearly sum of pounds, by way of anticipation, or attempt, or agree so to do, or shall become bankrupt or insolvent, or shall do any act whereby the same if payable to him would become vested in some other person or persons, then upon the trusts following, that is to say; *Upon trust* that they the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, during the joint lives of the said [*gentleman*] and [*lady*], pay, apply, and dispose of the said annuity, or yearly sum of pounds, to such person or persons, and for such intents and purposes only, as the said [*lady*], by any writing or writings under her hand, from time to time, notwithstand-

Declaration that trustees shall stand possessed of annuity,

Upon trust for gentleman, until he should do some act to vest the same in another.

then upon trust during joint lives of lady and gentleman, to pay the same as lady shall direct;

WHEREBY ANNUITY IS GRANTED, &c.

ing her coverture, (but not by way of anticipation) shall direct or appoint; *And* in default of such direction or appointment, do and shall pay the same into the proper hands of the said [*lady*], for her sole and separate use and benefit, and not to be subject to the debts, contracts, engagements, or controul of the said [*gentleman*]; and the receipt and receipts in writing of the said [*lady*], or of such person or persons as she shall from time to time direct or appoint to receive all or any part of the said annuity or yearly sum of pounds, shall from time to time, notwithstanding the said intended coverture, be good and effectual receipts and discharges, for such sums of money as in such receipts and discharges shall be respectively expressed to be received; *And upon this further trust*, that if the said [*gentleman*] shall survive the said [*lady*], then and in such case the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall thenceforth, during the remainder of the life of the said [*gentleman*], from time to time, pay, apply, and dispose of the said annuity, or yearly sum of pounds, in such manner, for the support or otherwise for the benefit of the said [*gentleman*], and his issue by the said [*lady*], as the said [*trustees*], or the survivor of them, or the executors, administrators, and assigns of such survivor, shall think proper; and after the decease of the said [*gentleman*], *In trust* to pay the said annuity or sum of pounds to the said [*lady*], for her own use and benefit; *And* after the decease of the survivor of them the said [*gentleman*] and [*lady*], *In trust* for all and every, or such one or more exclusively of the others or other of the said children or child, or remoter issue of the said [*gentleman*], by the said [*lady*], with such provisions for their respective maintenance, education, and advancement, and at such age, day, or time, or at such ages, days, or times, and if more than one, in such parts, shares, and proportions, and upon such conditions, with such restrictions, and in such manner as the said [*gentleman*] and [*lady*] shall by any deed or deeds, instrument or instruments in writing, from time to time direct or appoint; *And* in default of any such direction or appointment, and so far as any such direction or appointment shall not extend, then as the

and in default of appointment, to lady for her separate use.

Lady's receipts sufficient discharges.

And upon trust, if gentleman shall survive lady, for gentleman and issue of the marriage;

and after such decease, to lady;

and after decease of survivor of gentleman and lady, to such children as they shall jointly appoint;

In default of joint appointment, survivor shall appoint;

WHEREBY ANNUITY IS GRANTED, &C.

survivor of them, the said [*gentleman*] and [*lady*], shall by any deed or deeds, instrument or instruments in writing, or by his or her last will and testament in writing, or by any codicil or codicils thereto, from time to time direct or appoint; *And* in default of such last mentioned direction or appointment, and so far as any such last mentioned direction or appointment, if incomplete, shall not extend, *In trust* for all and every of the children or child of the said [*gentleman*] by the said [*lady*], and in such shares and proportions as the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, should think fit and proper: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if there shall be no child, or remoter issue of the said [*gentleman*] by the said [*lady*], who shall become entitled to the aforesaid annuity or yearly sum of pounds, under the trusts hereinbefore declared concerning the same, then after the decease of the survivor of them the said [*gentleman*] and [*lady*], and such failure of their issue as aforesaid, the said annuity or yearly sum of pounds shall cease, determine, and be utterly void to all intents and purposes whatsoever: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said intended marriage, and of the settlements so made by the said [*lady*] and [*father of lady*] as aforesaid, and also in consideration of ten shillings of lawful money of Great Britain and Ireland, to each of them the said [*father of gentleman*] and [F. A.] his wife, by the said [*trustees*] paid, at or immediately before the sealing and delivering of these presents, (the receipt whereof is hereby acknowledged,) THEY the said [*father of gentleman*], and [F. A.] his wife, so far as she can or may at law, or in equity, *Have*, and each of them *Hath* granted, bargained, sold, released, and confirmed, and by these presents *Do*, and each of them *Doth* grant, bargain, sell, release, and confirm unto the said [*trustees*], (in their actual possession &c.) (*reference to lease for a year*) and to their heirs, ALL THAT, &c. (*parcels*); Together with, &c. (*general words*); *And* all the estate &c.; TO HAVE AND TO HOLD the said manors or lordships, messuages or tenements, farms, lands, hereditaments, and all and singular

and in default, in trust for younger children, in such way as to trustees should seem proper.

Proviso, that on failure of issue, and death of survivor of gentleman and lady, annuity to cease.

Second testatum, whereby hereditaments are conveyed to trustees for securing payment of annuity.

Habendum to trustees during lives of grantors, upon trusts hereinafter mentioned.

other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances, unto and to the use of the said [*trustees*], their heirs and assigns, during the lives of the said [*father of gentleman*] and [F. A.] his wife, and the life of the survivor of them, nevertheless upon the trusts, and for the intents and purposes hereinafter expressed and declared of and concerning the same: AND for more effectually conveying and assuring the same manors or lordships, messuages or tenements, farms, lands, hereditaments, and premises, to the uses, upon the trusts, and in manner hereinafter mentioned; HE the said [*father of gentleman*], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their heirs and assigns, that he the said [*father of gentleman*] and [F. A.] his wife, (she hereby consenting) shall and will at their own costs and charges, as of Term, or before the end of Term, now next ensuing, acknowledge and levy before his Majesty's justices of the court of Common Pleas at Westminster, one or more fine or fines *sur concesserunt*, with proclamations, in due form of law, unto the said [*trustees*] and their heirs, of the said manors or lordships, messuages or tenements, farms, lands, hereditaments, and all and singular the premises hereinbefore described, and every part and parcel thereof, by such apt and convenient names, quantities, qualities, numbers of acres, and other descriptions, as shall be sufficient to comprise and ascertain the same, and as shall for that purpose be thought fit; *And* it is hereby agreed and declared between and by the parties to these presents, that the said fine or fines so as aforesaid, or in any other term or terms, to be acknowledged and levied, and every other fine, conveyance, and assurance in the law whatsoever, heretofore had, made, levied, suffered, and executed, of the same manors or lordships, messuages or tenements, farm, lands, hereditaments and premises, or any of them, or any part thereof, by or between the parties to these presents, or any of them, or whereunto they or any of them are, is, or shall be a party or parties, shall be and enure, and be adjudged, deemed, construed, and taken to be and enure, *To the only use* of the said [*trustees*], their heirs and assigns, during the lives

WHEREBY ANNUITY IS GRANTED, &C.

Covenant to levy a fine *sur concesserunt.*

To the use of trustees,

WHEREBY ANNUITY IS GRANTED, &c.

of the said [*father of gentleman*] and [F. A.] his wife, and the life of the survivor of them, but nevertheless upon the trusts, and for the intents and purposes, hereinafter mentioned, expressed, and declared, (that is to say); *Upon trust* that they the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall permit the said [*father of gentleman*], or [F. A.] his wife, as the case may be, to receive and take the rents, issues, or profits of the manors or lordships, messuages or tenements, farms, lands, hereditaments and premises hereby granted and released, or intended so to be, with their appurtenances, until default shall be made by the space of thirty days in the payment of the said annuity or yearly sum of pounds, or some part thereof, at the times and in the manner aforesaid; *And* that in case and so often as the said annuity or yearly sum of pounds, or any part thereof, shall happen to be behind and unpaid by the space of thirty days, then and so often it shall be lawful for the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, from time to time, by and out of the rents, issues, and profits of the said manors or lordships, messuages or tenements, farms, lands, hereditaments, and premises hereby granted and released, or intended so to be, or by leasing, mortgaging, or selling the same, or any part thereof, or by bringing actions against the tenants or occupiers of the said manors or lordships, messuages or tenements, farms, lands, hereditaments, and premises hereby granted and released, or intended so to be, with the appurtenances, for recovering the rents, issues, and profits thereof, or by one, or more than one, or by all the aforesaid ways and means, or by such other reasonable ways and means as to the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall seem meet, raise the said annuity, or yearly sum of two hundred pounds, and all arrears thereof, which shall afterwards during their continuance in possession, accrue of the said annuity, or yearly sum of pounds, and all costs, charges, and expenses, which the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall sustain by reason of the non-

upon trust to permit grantors to receive rents, &c. until default in paying annuity;

but if default shall be made, to raise annuity,

and all arrears,

and all costs.

payment thereof; and stand possessed of, and interested in the same, upon the trusts hereinbefore in that behalf mentioned: *And* do and shall pay the surplus (if any) of the money raised by the ways and means aforesaid, to the said [*father of gentleman*] and [F. A.] his wife, and the survivor of them; AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and performance of the said agreement on the part of the said [*gentleman*], and in consideration of the said intended marriage, and of the settlements so made as aforesaid by the said [*lady*], of the sum of two thousand pounds, and the said annuity or yearly sum of pounds, so covenanted to be paid and secured as aforesaid; HE the said [*gentleman*], with the privity and consent of the said [*father of gentleman*] and [F. A.] his wife, and also with the privity of the said [*lady*], (testified by their respectively being parties to, and sealing and delivering these presents,) *Doth* hereby for himself, his heirs, executors, administrators, and assigns, COVENANT (*b*), promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, that he the said [*gentleman*], his executors or administrators, shall and will, within one calendar month after he or they shall become entitled to the payment and actual receipt of the said portion, under the hereinbefore recited deed poll, or to any other portion or portions whatsoever, from the said [*father of gentleman*] and [F. A.] his wife, or the survivor of them, make, do, and execute, at the request of the said [*trustees*], their executors, administrators, and assigns, all such proper and necessary acts, things, deeds, and assignments for effectually vesting, assuring, and transferring the said sum of pounds, in and unto the said [*trustees*], their executors, administrators, and assigns, as they or any of them, their or any of their counsel, shall advise or require, upon the trusts, and for the intents and purposes hereinafter expressed and declared, (that is to say); *Upon trust* that the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall lay out and invest the same in their or his names or name, in

WHEREBY ANNUITY IS GRANTED, &c.

Surplus (if any) to father of lady.

Third testatum, whereby gentleman

covenants to settle, convey, and assign a part of his portion

to trustees,

to invest the same at interest on government or real security,

(*b*) See *ante*, p. 100.

WHEREBY ANNUITY IS GRANTED, &c.

the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, and do and shall from time to time alter, vary, and transpose the said stocks, funds, and securities, for or into other stocks, funds, and securities of the like nature; PROVIDED ALWAYS that every such calling in, sale, and alteration, variation or transposition, shall, during the joint lives of the said [*gentleman*] and [*lady*], be made with the consent in writing of both of them the said [*gentleman*] and [*lady*], and after the decease of such of them as shall first depart this life, shall during the life of the survivor of them, be made with the consent of such survivor, and shall after the decease of such survivor be made at the discretion, and of the proper authority of the said [*trustees*], or of the survivor of them, or the executors, administrators, or assigns of such survivor, and do and shall stand possessed thereof, and the said trust monies, stocks, funds, and securities upon which the same shall be invested, *In trust* for the said [*gentleman*] and his assigns, during his life, and after the decease of the said [*gentleman*], *In trust* for the said [*lady*] and her assigns, during her life, and after the decease of the said [*lady*], *In trust* for all and every, or such one or more exclusively of the other or others of the children or child of the said [*gentleman*] by the said [*lady*], with such provisions for their respective maintenance, education, and advancement, at such time or times, and if more than one, in such shares, and upon such trusts, and in such manner for the benefit of the said children, or some or one of them, as the said [*gentleman*] and [*lady*] shall by deed jointly appoint; and in default of such appointment, *In trust* for all and every, or such one or more exclusively of the other or others of the said child or children, with such provisions for the respective maintenance, education, and advancement, at such time or times, and if more than one, in such shares and upon such trusts, and in such manner for the benefit of such children, or some or one of them, as the survivor of them the said [*gentleman*] and [*lady*], shall by deed or will appoint, and in default of such last mentioned appointment, *In trust* for all and every the children and child of the said [*gentleman*] by the said [*lady*], who being a son or sons

and vary the same,

with joint consent in writing, and after the decease of one of them, with consent of survivor;

after the decease of survivor, at the discretion of the trustees,

and to stand possessed thereof for gentleman during his life;

for lady during her life;

after decease of lady, to children, as gentleman and lady should jointly appoint;

in default of joint appointment, as survivor should appoint;

and in default of such last-mentioned appointment, to children as tenants in com-

WHEREBY ANNUITY IS GRANTED, &C.

shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age, or marry under that age, with the consent of her or their parent or parents, guardian or guardians for the time being, to be divided between or amongst the said children, (if more than one) in equal shares; and if there should be but one such child, then *In trust* for that one child; *And* if there shall be no child who shall become entitled as aforesaid, then in trust for the survivor of them the said [*gentleman*] and [*lady*], his or her executors or administrators, for his, her, or their absolute use and benefit, as part of his or her personal estate; AND it is hereby agreed, that in every settlement to be made of such monies as aforesaid, shall be inserted such provisions for the maintenance, education, and advancement of the children, and such provisions for changing the securities, and laying out the trust monies in the purchase of real estate of the nature of personalty, and for the appointment of new trustees, and such further and other powers and provisions for better explaining and effecting the objects of the said parties, (not inconsistent with the general scope of these presents) as by the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, or their or his counsel, shall be reasonably advised, devised, and required; (*Trustees' receipts sufficient discharges; Power to appoint new trustees; Clauses for their indemnity and reimbursement, as ante*, Vol. VII. *p.* 511, 512.) IN WITNESS, &c.

mon, and to be interests vested in them at 21, or marriage;

if no child, in trust for survivor of gentleman and lady.

Proviso that in every settlement to be made shall be inserted a proviso for maintenance, education and advancement of children, and provisions for changing securities, and appointment of new trustees.

BY A WARD OF COURT, OF REAL AND PERSONAL PROPERTY.

MARRIAGE SETTLEMENT *of a Ward of Court, who has married without the Consent of the Court, whereby Gentleman covenants that when Lady shall attain Twenty-one, to settle Freehold Hereditaments, upon Trust, for the separate Use of Lady for her Life; and after her Death, to the Use of her Sons in Tail; Remainder to the Use of her Daughters as Tenants in Common; Remainder to the Use of the Heir at Law of the Lady in Fee; Proviso that all Usual Powers should be inserted in Settlement;* Second Witnessing Part, *whereby Copyholds are covenanted to be settled, upon Trusts which will nearest correspond with the Uses declared of the Freeholds;* Third Witnessing Part, *whereby Gentleman covenants that when Lady attains Twenty-one, all necessary Acts shall be done to Bar an Estate Tail in other Premises, and to convey them to the Uses already declared of the firstly settled Freeholds;* Fourth Witnessing Part, *whereby Leaseholds are assigned, upon Trusts which will nearest correspond with Uses declared of Freeholds;* Fifth Witnessing Part, *whereby Books, Plate, and Furniture, are assigned upon Trusts for the Benefit of Lady, and the Children of the Marriage;* Sixth Witnessing Part, *whereby Stock is assigned to Trustees, upon Trusts for the Benefit of Lady, and the Children of the Marriage, with divers* SPECIAL *Clauses.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*gentleman*] of, &c. and [*lady*] his wife, of the first part; [B. B.] of, &c. of the second part; and [*trustees*] of, &c. of the third part: WHEREAS on the day of

Recital of solemnization of

BY A WARD OF COURT, OF REAL AND PERSONAL PROPERTY.

the said [*gentleman*] and [*lady*] intermarried together at the church at , having been previously married at Gretna Green, in Scotland, on the day of preceding, and soon afterwards the said [*gentleman*] was committed to his Majesty's prison of the Fleet, for his contempt in so marrying as aforesaid; AND WHEREAS by an order of his Majesty's High Court of Chancery, bearing date the day of , and made in a cause in which the said [*lady*] by the said [B. B.] her uncle and next friend was plaintiff, and the said [*gentleman*] her husband, was defendant: IT was (amongst other things) ordered, that it should be referred to Mr. , one of the masters of the said Court, to whom several matters in the cause then stood referred, to approve of a proper settlement of the fortune of the said [*lady*], under the direction of the said court, and all parties were to be at liberty to lay proposals before the said Master, for a settlement for his approbation; but the said Master, in approving of a settlement, was to have a regard that all the fortune of the said [*lady*] should be settled as strictly at law or equity as it possibly could, to exclude the interference of the said [*gentleman*] her husband during her life, and that the rents, profits, and produce thereof be from time to time paid into her own proper hands, and never by way of anticipation; *And* the said [*lady*] was to be at liberty to apply to the said court from time to time, as there should be occasion; AND WHEREAS in obedience to the said order, the said [*master*] made his report, bearing date the day of and thereby certified that he had been attended by the solicitors for all the parties, and had in their presence proceeded in the matters referred to him by the said order; *And* he further certified, that having enquired in the first place what the fortune of the said plaintiff [*lady*] consisted of, it had been stated to him and admitted, that she was entitled to, &c. (*state the description of the property in the report verbatim*): AND WHEREAS in obedience to the said hereinbefore recited order of the day of last, the said master hath approved of the said [A. B.], [C. D.], and [E. F.], as proper persons to be the trustees of these presents, being the articles to be executed by the said [*gentleman*] in obedience to the here-

marriage at church, and at Gretna Green; and that husband was committed to the Fleet.

Order directing Master to receive proposals for the settlement of lady's property upon herself.

Report of the master thereupon.

Approval by the master of the trustees.

OF REAL AND PERSONAL PROPERTY, BY A WARD OF COURT.

inbefore recited order of the day of last (*a*): AND WHEREAS in order that the said sum of pounds, three per centum consolidated bank annuities, which was standing in the names of the said [L. L.] and [M. M.] as hereinbefore is mentioned, may be settled, pursuant to the said order, the said [L. L.] and [M. M.] have this day, with the consent of the said [*gentleman*] and [*lady*] his wife, (testified by their being parties to and sealing and delivering these presents), transferred the said sum of pounds, three per centum consolidated bank annuities, so standing in their names as aforesaid, into the joint names of the said [*trustees*], and the same is now standing in their names in the books of the governor and company of the bank of England: AND WHEREAS the said master hath perused and doth approve of this indenture, and in testimony of his approbation of the same, hath written his name in the margin of the first skin thereof: NOW THIS INDENTURE WITNESSETH, that in obedience to the hereinbefore recited order of the day of last, and in consideration of the marriage so lately had and solemnized between the said [*gentleman*] and [*lady*] his wife as hereinbefore is mentioned, HE the said [*gentleman*] *Doth* hereby for himself, his heirs, executors, and admininistrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, and administrators; *And* the said [*lady*] *Doth* hereby for herself, so far as she can and lawfully may, consent and agree, that in case she the said [*lady*] shall live to attain the age of twenty-one years, they the said [*gentleman*] and [*lady*] his wife, and all other persons having or claiming, or to claim by, from or under, or in trust, for them, or either of them, shall and will, immediately on the said [*lady's*] attaining the age of twenty-one years, or as soon after as conveniently may be, at the expense of the estate and effects of the said [*lady*], by one or more fine or fines, or common recovery or common recoveries, and such other good and sufficient conveyances, and assurances in the law, and in such manner as the said [*trustees*], or the survivors or survivor of them, or the executors or adminis-

Transfer of stock into the names of trustees.

Approbation by master, of settlement.

First testatum, whereby gentleman covenants, and lady (so far as she can) agrees to do all necessary acts,

(*a*) The master usually signs an *approval* in the margin of the last skin, and his name or initials in the margin of every skin.

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

for conveying,

trators of such survivor, or their or his counsel in the law, shall advise, require, or direct, convey, settle, and assure the undivided shares, hereditaments, and premises comprised in the settlement of the said [*lady's father*], her father, and to which the said [*lady*] is so entitled in tail in possession under the said settlement as hereinbefore is mentioned, with their appurtenances, and the fee simple and inheritance thereof respectively, freed and discharged of and from all estates tail, and all remainders, limitations over, and reversions thereupon expectant or depending, and so and in such manner as that the same undivided shares, hereditaments, and premises, and their appurtenances, shall and may thenceforth remain and be, *To the uses*, upon and for the trusts and purposes, and with, under, and subject to the powers, provisoes, and agreements hereinafter expressed and contained of and concerning the same, (that is to say); *To the use* of the said [*trustees*] and their heirs, during the life of the said [*lady*], without impeachment of waste, upon trust by the usual ways and means to preserve the contingent remainders; *And* upon trust during the life of the said [*lady*] to pay and apply the rents and profits of the said undivided shares, hereditaments, and premises, comprised in the said settlement of the said [*lady's father*], *To the sole and separate use* of the said [*lady*], so that the same may be free from the control, debts, interference, or engagements of the said [*gentleman*], or any future husband, and also so that the said [*lady*] may be effectually prevented from anticipating the growing payments; *But* with a power enabling the said [*lady*], in case she shall survive the said [*gentleman*], and at any time while she shall be free from coverture, by any deed or writing to be executed by her in the presence of, and attested by two or more witnesses, to revoke the said trusts in regard to the said rents and profits, during her life, and to declare such other trusts of the said rents and profits, as she shall think proper; *And* after the decease of the said [*lady*], *To the use* of the first and every other son of the said [*lady*], by the said [*gentleman*], severally and successively, according to their several and respective seniorities in tail; *And* for default of such issue, *To the use* of all and every the daughters and daughter of the

To the use of the trustees, during the life of the wife, to preserve contingent remainders;

and to pay the rents to wife for her separate use;

remainder to the use of the first and every other son in tail;

remainder to the use of the daughters, as

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

said [*lady*], as tenants in common in tail, with cross remainders between or amongst them in tail; *And* for default of such issue, *To such uses*, and upon and for such trusts, intents, and purposes, as the said [*lady*] shall, at any time after the decease of the said [*gentleman*], and while she shall be free from coverture, by any deed or deeds, writing or writings, to be executed by her in the presence of, and attested by two or more witnesses, or by will or codicil, to be executed by her in the presence of, and attested by three or more witnesses, appoint; *And* in default of such appointment, and subject thereto, *To the use* of the said [*trustees*], their heirs and assigns, *Upon trust* to convey the said undivided shares, hereditaments, and premises, comprised in the settlement of the said [*lady's father*], with their appurtenances, unto the person or persons, who at the time of the decease of the said [*lady*], shall be her heir at law, his, her, or their respective heirs and assigns, in manner following (that is to say); *If* one person only shall be the heir at law of the said [*lady*], then to that person, his or her heirs and assigns for ever; *And* if more than one person shall be the heir at law of the said [*lady*], then to convey the same to the persons who shall be the heirs at law of the said [*lady*], and to their respective heirs and assigns; *And* to be divided between or amongst such persons, in the shares in which such persons would have taken the same by descent, if the said [*lady*] had died seised of the same for a legal estate of inheritance in fee simple; and the person or persons who, at the time of the decease of the said [*lady*], should be her heir at law, shall take the said undivided shares, hereditaments, and premises, as a purchaser or purchasers; *And* in the intended settlement, there shall be contained a power enabling the said [*lady*], whether covert or sole, by any deed or writing, will or codicil, to be by her respectively executed as aforesaid, to charge the said undivided shares, hereditaments, and premises, comprised in the settlement of the said [*lady's father*], in any sum or sums she shall think proper, not exceeding in the whole the sum of pounds of lawful money of Great Britain and Ireland, for or towards the portions of her daughters and younger sons by her said present, or any future husband, and to create a term of years in the said undivided shares, heredi-

tenants in common, in tail;

remainder to such uses as lady, after decease of gentleman, shall appoint;

and in default, to the use of trustees, upon trust to convey the hereditaments to such person or persons as shall be her heir or heirs at law;

and that a power shall be contained in the settlement for the lady to charge the hereditaments with —*l.* for portions of younger children,

and to create a term of years

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

taments, and premises, for raising the same; *And* in the said intended settlement, it shall be declared that the sum or sums which shall be so charged, shall be equally divided between or amongst such daughter and younger sons, if more than one; *But* power shall be given to the said [*lady*], to apportion the sum or sums which shall be so charged, so and in such manner as that her daughters and younger sons by the said [*gentleman*], may be entitled to one moiety of such sum or sums; *And* in the intended settlement, it shall be declared that the shares of the sons in the sum or sums, which shall be so charged as aforesaid, shall be vested in them on their respectively attaining the ages of twenty-one years, and that the shares of the daughters in the same sum or sums, shall be vested in them on their respectively attaining the age of twenty-one years, or marrying under that age, with the consent of their respective guardian or guardians; *But* that the payment of the said shares, if the same shall become vested in the lifetime of the said [*lady*], shall be postponed till after her decease; *And* in the said intended settlement, shall be inserted the usual clauses of survivorship and accruer, as to the shares of those children who shall die before their shares shall become vested, and power shall be given to the said [*lady*], to direct the trustees of the term to be created as aforesaid, to raise, after her decease, out of the said rents and profits of the said shares, hereditaments, and premises, comprised in the settlement of the said [*lady's father*], such sum or sums of money, for the maintenance and education of such daughters and younger sons, till their respective shares shall become vested, as the said trustees shall think fit, not exceeding in the whole what the interest on the expectant shares of such daughters and younger sons, in the sum or sums which the said [*lady*] shall have so charged, would amount to, after the rate of five pounds per cent. per annum; *And* in the said intended settlement, shall be contained a power enabling the said [*lady*], notwithstanding her present coverture, by her will or codicil, to be by her executed as aforesaid, to charge the said undivided shares, hereditaments, and premises, comprised in the settlement of the said [*lady's father*], with the payment to the said [*gentleman*], and his assigns, during his

for securing the same,

with other usual clauses,

and a power to charge the hereditaments with the payment of an annual sum for gentleman, if he survives lady,

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

life, in the event of his surviving her, of such an annual sum or yearly rent, as she the said [*lady*] shall think proper, not exceeding in the whole the sum of of lawful money of Great Britain and Ireland, and to be payable quarterly or half-yearly, as she shall direct, and with the usual powers and remedies for recovering and compelling the payment thereof when in arrear, and to create a term of years for securing the same; *And* in the said intended settlement shall be contained a power enabling the said [*lady*] in the event of her surviving the said [*gentleman*], and marrying again, and either before or after her future marriage, by any deed or writing, will, or codicil, to be by her respectively executed as aforesaid, to limit or appoint any part or parts, not exceeding in the whole one moiety of the said undivided shares, hereditaments, and premises, comprised in the settlement of the said [*lady's father*], *To such uses*, upon and for such trusts, and in such manner, in favor, or for the benefit of any future husband, and her issue by him, as the said [*lady*] shall think proper; *And* in the said intended settlement shall be contained a power enabling the said [*lady*], during her life, and whether covert or sole, and after her decease the said [*trustees*], and the survivors and survivor of them, and the executors or administrators of such survivor, during the minority of any tenant in tail in possession, to limit or appoint by way of lease the said undivided shares, hereditaments, and premises, comprised in the settlement of the said [*lady's father*], or any part thereof, to any person or persons for any term or terms of years, not exceeding twenty-one years in possession, for the best rent that can be had for the same, without taking any fine or premium for the making thereof, and under the usual restrictions, and also to open and work mines, and to carry away the coals, ores, and minerals, which shall be got out of the said mines, and to use such ground, and to erect and make such buildings, engines, roads, and works, as shall be necessary for opening and working the said mines, and carrying away the said coals, ores, and minerals, and to limit or appoint, by way of lease, any set or sets of the said mines or works, or any of them, and the ground and soil thereof, and also the ground convenient to be held therewith, or in or upon which the said mines or works may be conveniently sunk and worked,

and a power to lady to limit a moiety of the hereditaments for the benefit of any future husband and the children of any future marriage;

and also a power to lady, and to trustees during minorities, to lease for 21 years,

and to grant leases for mining purposes, for 21 years;

as aforesaid, to any person or persons, for any term or terms of years, not exceeding twenty-one years in possession, for the best rent that can be had for the same, without taking any fine or premium for the making thereof, and under the usual restrictions; and also powers enabling the said [*trustees*], and the survivors or survivor of them, or the executors or administrators of such survivor, at the request in writing of the said [*lady*], whether covert or sole, to make partition of any part or parts of such of the hereditaments and premises, comprised in the settlement of the said [*lady's father*], as may consist of undivided shares; *And* also to limit or appoint all or any part or parts of the said undivided shares, hereditaments, and premises, comprised in the settlement of the said [*lady's father*], to any person or persons whomsoever, by way of sale, or in exchange for other hereditaments in England or Wales; *And* for the purpose of effecting any such partition, sale, or exchange, to revoke the uses in the intended settlement to be limited, and to appoint such other uses as the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, shall think proper, with the usual clauses to enable the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, to give receipts and discharges to any person purchasing any part of the said premises, or paying money for equality of partition or exchange, and with directions to the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, to lay out the money received by them or him, on any such partition, sale, or exchange, as aforesaid, in the purchase of other estates in England or Wales, and to settle the estates so to be purchased, or which shall be received by way of partition, or exchange, as aforesaid, to the subsisting uses of the intended settlement; and until a purchaser can be found, to lay out the money so to be received by them or him, in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or upon government or real securities in England or Wales, with power to vary the same stocks, funds, and securities, as occasion may require, and with directions to pay the interest, dividends, and annual produce thereof to the persons, for the time being en-

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

and also a power to make partition,

and powers of sale and exchange.

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

titled to the rents of the settled estates remaining unsold: AND THIS INDENTURE FURTHER WITNESSETH, that in further obedience to the said hereinbefore recited order of the day of last; *And* in consideration of the said marriage, HE the said [*gentleman*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors and administrators; *And* the said [*lady*] doth hereby for herself, so far as she can and lawfully may consent and agree, that in case the said [*lady*] shall live to attain the age of twenty-one years, *They* the said [*gentleman*], and [*lady*] his wife, and all other persons claiming, or to claim, by, from, or under, or in trust for them, or either of them, shall and will, immediately on the said [*lady's*] attaining the age of twenty-one years, or as soon after as conveniently may be, at the expense of the estate and effects of the said [*lady*], by one or more surrender or surrenders, recovery or recoveries, and by such other good and sufficient assurances in the law, and in such manner as the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, shall advise, require, or direct, well and effectually bar and destroy all estates tail of the said [*lady*], of and in all that the copyhold estate, situate at in the said county of , to which the said [*lady*] is so entitled in tail male in possession, under the said will of the said [*lady's grandfather*] her grandfather, as hereinbefore is mentioned, and of and in the appurtenances to the said copyhold estate belonging or appertaining, and the remainders, limitations over, and reversion in such estates tail, expectant or depending, and vest the same copyhold estate, with their appurtenances, in the said [*trustees*], their heirs and assigns, for an estate of inheritance as of fee simple in possession, *Upon* and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as, regard being had to the difference in the nature and quality of the respective estates, will best or nearest correspond with the uses, trusts, intents, purposes, powers, provisoes, agreements, and declarations to, upon, for, with, under, and subject to which the said undivided shares,

Second testatum, whereby gentleman covenants with trustees, and the lady consents, so far as she can, that if she shall attain twenty-one, they will do all necessary acts for barring an estate tail and remainders in certain copyhold hereditaments,

and vest the same in trustees upon trusts which will nearest correspond with the uses declared of the freeholds;

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

hereditaments, and premises, comprised in the settlement of the said [*lady's father*], are hereinbefore covenanted or agreed to be settled, but not so as to enable the said [*lady*] to double or increase any annual or principal sums, which she shall be authorised to charge under the said powers, or any of them: AND THIS INDENTURE FURTHER WITNESSETH, that in further obedience of the said hereinbefore recited order of the day of , and in consideration of the said marriage, HE the said [*gentleman*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree to and with the said [*trustees*], their heirs and assigns; *And* the said [*lady*] doth hereby for herself, so far as she can and lawfully may, consent and agree, that if she the said [*lady*] shall live to attain the age of twenty-one years, and the estates of which she is tenant in tail male in remainder, under the said will and codicils of the said [*lady's grandfather*], shall not by failure of the prior limitations have then come into possession, *Then*, and in such case, THEY the said [*gentleman*], and [*lady*] his wife, and all other persons claiming, or to claim, by, from, or under, or in trust for them, or either of them, shall and will, immediately upon the said [*lady*] attaining the age of twenty-one years, or as soon after as conveniently may be, at the expense of the estate and effects of the said [*lady*], by one or more fine or fines, and by such other good and sufficient conveyances and assurances in the law, and in such manner, as the said [*trustees*], or the survivors or survivor of them, or the heirs of such survivor, or their or his counsel in the law, shall advise, require, or direct; and when and as her estate in tail male in remainder shall, by failure of the prior limitations, have come into possession, then at such expense, as aforesaid, by one or more common recovery, or common recoveries, and by such other good and sufficient conveyances in the law, and in such manner, as the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, shall advise, require, or direct; but if the said [*lady*] shall live to attain the age of twenty-one years, and the said estates of which she is sole tenant in tail male in remainder, as aforesaid, shall by failure of the

but not so as to enable the wife to double any sum.

Third witnessing part, whereby gentleman covenants with trustees, and wife covenants, so far as she can,

that when she shall attain twenty-one, if her estates under a certain will have not come into possession, then that they will,

by one or more fines or other assurances,

and when they shall come into possession, then by one or more recoveries;

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

prior limitations, have then come into possession, *Then* and in such case, they the said [*gentleman*], and [*lady*] his wife, and all persons claiming, or to claim, by, from, or under, or in trust for them, or either of them, shall and will immediately upon the said [*lady*] attaining the age of twenty-one years, or as soon after as conveniently may be, but at such expense as aforesaid, by one or more common recovery or common recoveries, and by such other good and sufficient conveyances and assurances in the law, and in such manner as the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law shall advise, require, or direct, convey, settle, and assure, ALL that freehold estate at in the county of , *And* also all that eighth turn or right of presentation to the church of ; *And* also all that and those the freehold farm and lands at in the county of ; *And* also all that and those the manor of in the said county of , and the freehold and copyhold estates belonging thereto ; *And* also all that the advowson of the rectory or parish church of (to all which said estates and premises the said [*lady*] is, under the will and codicils of [*lady's grandfather*], entitled for an estate in tail male in remainder, as hereinbefore is mentioned), together with their, and every of their rights, members, and appurtenances, and the fee simple and inheritance thereof respectively, freed and discharged of and from all estates tail, if such fine or fines as aforesaid shall be levied; but if such recovery or recoveries as aforesaid shall be suffered, then freed and discharged of and from all estates tail, and all remainders and limitations over, and reversions thereupon expectant or depending, and so and in such manner as the said estates, hereditaments, and premises lastly hereby covenanted or agreed to be settled, with their rights, members, and appurtenances, shall and may thenceforth remain and be, *To* the same uses, upon and for the same trusts, intents, and purposes, and with, under, and subject to the same powers, provisoes, agreements, and declarations, (except the power to the said [*lady*], to charge with portions for her daughters and younger sons, to the extent of pounds), to, upon, for, with, under,

or if they shall have come into possession, then by one or more recoveries,

convey and assure parcels,

to the same uses (except the power of charging with portions) as have been declared of the firstly settled hereditaments ;

and subject to which the said undivided shares, hereditaments, and premises, comprised in the settlement of the said [*lady's father*], are hereinbefore covenanted or agreed to be settled; *But* not so as to enable the said [*lady*] to double or increase the annual sum which she shall be authorized to charge in favor of the said [*gentleman*] for his life, in the event of his surviving her; AND it is hereby covenanted and agreed, that in addition to the powers to which the said estates, hereditaments, and premises, lastly hereby covenanted, or agreed to be settled, are to be subject as aforesaid, there shall in the intended settlement be contained a power enabling the said [*lady*], when her said estate in tail and in remainder, under the said will and codicil of the said [*lady's grandfather*], shall by failure of the prior limitations, have come into possession, and whether covert or sole, shall by any deed or writing, will or codicil, to be by her respectively executed as aforesaid, to charge the said estates, hereditaments, and premises, lastly hereby covenanted, or agreed to be settled, or any part or parts thereof, with any sum or sums of money she the said [*lady*] shall think proper, for or towards the portions of her daughters and younger sons by her said present, or any future husband, not exceeding in the whole such a sum as, together with the sum which she shall charge under the powers given her to charge with portions to the extent of

pounds, will amount to the sum of

pounds of lawful money of Great Britain and Ireland, and to create a term of years in the same estates, hereditaments, and premises for raising the same; *And* in the said intended settlement, it shall be declared that the sum or sums which shall be so charged on the said estates, hereditaments, and premises, lastly hereby covenanted, or agreed to be settled, shall be equally divided between or amongst such daughters and younger sons as aforesaid, if more than one, but power shall be given to the said [*lady*] to apportion the sum or sums which shall be so charged as last aforesaid, so and in such manner as that her daughters and younger sons by the said [*husband*] may be entitled to one moiety of such sum or sums, and that her daughters and younger sons by any future husband or husbands may be entitled to the other moiety of such sum or sums; *And*

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

but not so as to enable lady to limit a double sum to her husband;

but with an additional power of portioning younger children.

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

in the said intended settlement it shall be declared, that the shares of the sons in the sum or sums which shall be so charged as last aforesaid, shall be vested in them on their respectively attaining the age of twenty-one years, and the shares of the daughters shall be vested in them on their respectively attaining the age of twenty-one years, or marrying under that age with the consent of their guardian or guardians, but that payment of the said shares, if the same shall become vested in the lifetime of the said [*lady*], shall be postponed till after her decease; *And* in the intended settlement shall be inserted the usual clauses of survivorship and accruer, as to the shares of those children who shall die before their shares shall have become vested, and power shall be given to the said [*lady*] to direct the trustees of the term to be created as last aforesaid, to raise after her decease, out of the rents and profits of the said estates, hereditaments, and premises lastly hereby covenanted or agreed to be settled, such sum or sums of money for the maintenance and education of such daughters and younger sons, till their respective shares shall become vested, as the said trustees shall think proper, not exceeding in the whole what the interest on the expectant shares of such daughters and younger sons in the sum or sums which the said [*lady*] shall have so charged as last aforesaid would amount to, after the rate of five pounds per cent. per annum: AND THIS INDENTURE FURTHER WITNESSETH, that in further obedience to the said hereinbefore recited order of the day of , and in consideration of the said marriage, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*], to the said [*gentleman*] and [*lady*] his wife paid, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) THEY the said [*gentleman*] and [*lady*] his wife, according to their respective estates, rights, and interests, *Have*, and each of them *Hath* bargained, sold, assigned, and confirmed; *And* by these presents do, and each of them *Doth* bargain, sell, assign, and confirm unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the leasehold estate, situate, &c. and held under two leases for twenty-one years, from the dean and chapter of , and renewable every

Third testatum, whereby gentleman and lady assign

certain leasehold premises.

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

seven years, as hereinbefore is mentioned, and to which the said [*lady*] is so absolutely entitled, under the will of the said [*lady's grandfather*], as hereinbefore also is mentioned; *And* also all that moiety of a malthouse, brewery, or lands, situate at in the said county of , and held under two leases for twenty-one years, from the dean and chapter of , and renewable every seven years as thereinbefore is mentioned; *And* also all that one-sixteenth part or share of the colliery in the county of , held by lease for twenty-one years from the dean and chapter of , with the like part or share of the implements and fixtures thereto belonging; *And* also all that one-eighth part or share of the colliery, in the said county of , held under such articles for a lease, as hereinbefore is mentioned, the term of which lease was by the said articles to be for fifty-one years, commencing from the day of ; *And* also all that one-eighth part or share of the fitting or vending of the said collieries, which said moiety, one-sixteenth, and two several one-eighth parts or shares, became vested in the said [*lady*] immediately upon her marriage with the said [*gentleman*], and the appurtenances to the said leasehold and other premises hereby assigned, or intended so to be, belonging or appertaining; *And* all the estate, &c. To HAVE AND TO HOLD the said leasehold and other premises, hereinbefore assigned, or intended so to be, and every part thereof respectively, with their and every of their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, in as full, ample, and beneficial a manner as the [*gentleman*] and [*lady*], his wife, or either of them, could or might have held and enjoyed the same, in case these presents had not been made and executed; *But* nevertheless upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as, regard being had to the difference in the nature and quality of the respective properties, will best or nearest correspond with the uses, trusts, intents, purposes, powers, provisoes, agreements, and declarations to, upon, for, with, under, and subject to which the said undivided shares, hereditaments, and premises, comprised in the settlement of the

Habendum unto the trustees,

upon such trusts as will nearest correspond with the uses declared of the freeholds;

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

but not so as to enable lady to double any charge upon the premises.

said [*lady's father*], are hereinbefore covenanted or agreed to be settled; but not so as to enable the said [*lady*] to double or increase any annual or principal sums, which she shall be authorised to charge under the said powers, or any of them; yet so nevertheless that the said leasehold and other premises hereinbefore assigned, or intended so to be, shall not vest absolutely in any person or persons, who under, or by virtue of any of the limitations to be contained in the intended settlement, shall be a tenant or tenants in tail of the said undivided shares, hereditaments, and premises, comprised in the said settlement of the said [*lady's father*], unless and until such person or persons shall attain the age of twenty-one years, and shall become entitled to the actual possession of the same undivided shares, hereditaments, and premises, or to the receipt of the rents and profits thereof; And it is hereby further covenanted and agreed, that in the intended settlement shall be inserted proper provision for the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, to renew the leases of the said leasehold premises, or of such of the said premises as are usually renewable, and to apply a part of the rents and profits of the same premises, so as to pay off the fines and costs of renewal, by annual instalments of one-seventh part, at the end of each of the first seven years after every renewal; And it is hereby further covenanted and agreed, that in the intended settlement shall also be inserted the usual provisions for the appointment of [*trustees*] by the said [*lady*], during her life, and whether covert or sole, with the consent in writing of the surviving or continuing [*trustees*], or the executors or administrators of the last surviving or continuing [*trustee*], and after her decease, by the surviving or continuing [*trustees*] or [*trustee*], or the executors or administrators of the last surviving and continuing [*trustee*], and for the indemnity and reimbursement of the [*trustees*], and such other clauses, powers, provisoes, and declarations, for the further and better explaining, ascertaining, or effecting the intent and object of the parties thereto (but not inconsistent with the general scope of these presents), as by the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or

And in the settlement shall be contained powers to renew the leases of the leaseholds,

and powers to appoint new trustees by lady.

their or his counsel in the law, shall be reasonably advised, devised, and required; AND in further obedience to the said recited order of the day of , HE, the said [*gentleman*], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors and administrators, that if the said [*lady*] shall depart this life before the said intended settlement shall be completed, leaving him the said [*gentleman*], her surviving; *Then*, and in that case, he the said [*gentleman*] shall not nor will claim any estate to which he may be entitled as tenant by the curtesy, in any of the real estates hereinbefore covenanted or agreed to be settled: AND THIS INDENTURE FURTHER WITNESSETH, that in further obedience to the said hereinbefore recited order of the day of , and in consideration of the said marriage, and of the said sum of ten shillings of lawful money of Great Britain and Ireland, to the said [B. B.] by each of them the said [*trustees*], [*gentleman*], and [*lady*] his wife paid, at or before the sealing and delivery of these presents, the receipts whereof are hereby respectively acknowledged); HE, the said [B. B.], according to his right and interest therein, as the sole executor and trustee of the last will and testament of [*lady's father*] deceased, but not further or otherwise, and with the consent and approbation of the said [*lady*], (testified by her being a party to, and sealing and delivering these presents), *Hath* bargained, sold, and assigned; *And* by these presents, *Doth* bargain, sell, and assign; *And* the said [*gentleman*] and [*lady*] his wife, *Have*, and each of them *Hath*, bargained, sold, assigned, and confirmed, and by these presents *Do*, and each of them *Doth* bargain, sell, assign, and confirm unto the said [*trustees*], their executors, administrators, and assigns, *All* the books, pictures, plate, and furniture, which by the last will and testament of the said [*lady's father*] were given to the said [B. B.], his executors, administrators, and assigns, *In trust* for the said [*lady*] on her attaining the age of twenty-one years, or marrying, of which said books, pictures, plate, and furniture, an inventory hath been made and taken; and in testimony of its containing an accurate particular of the said books,

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

Covenant by husband, that if lady shall die before execution of settlement, that he will claim no estate by the curtesy.

Fourth witnessing part, whereby trustee of will of lady's father assigns

all the books and furniture which were given in trust for lady.

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

pictures, plate, and furniture, the said inventory hath been signed by the said [B. B.], and [*gentleman*], and [*lady*] his wife; *And* all the estate, &c., To HAVE, HOLD, RECEIVE, AND TAKE the said books, pictures, plate, and furniture, hereby assigned, or intended so to be, and every of them, and every part thereof respectively, unto the said [*trustees*], their executors, administrators, and assigns, *Upon* and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same respectively (that is to say); As to the said books, pictures, and plate, *Upon trust* that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall permit and suffer the said [*lady*] from time to time, and at all times hereafter during her life, to have, use, and enjoy the said books, pictures, and plate, to and for her own sole and separate use and benefit, exclusively of the said [*gentleman*] or any future husband, and without being in any wise subject or liable to the control, debts, interference, or engagements of the said [*gentleman*], or any future husband, as aforesaid; *And* after the decease of the said [*lady*], *Upon* and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, to, upon, for, with, under, and subject to which the said leasehold and other premises firstly hereinbefore assigned, or intended so to be, are by these presents directed to be settled, or as near thereto as the deaths of parties and other circumstances will then admit; *And* it is hereby agreed and declared between and by the parties to these presents, that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, shall and may, from time to time, at their or his discretion, examine the state and condition of the said books, pictures, and plate, and cause such reparations and restorations to be made of the same, as they or he shall judge reasonable; *And* the expense of such reparations and restorations shall be defrayed by the usufructuary for the time being of the said books, pictures, and plate; AND it is hereby further agreed and declared between and by the parties

Habendum to trustees, upon trust,

as to the books, &c. upon trust to permit the lady to enjoy the same for her separate use;

and after her decease, upon the same trusts as are hereinbefore declared of the leaseholds.

Power to trustees to examine and repair the books, &c.

Power to exchange the books, &c.

to these presents, that it shall be lawful to and for the said [*trustees*], and the survivors or survivor of them, and the executors, admininistrators, and assigns of such survivor, from time to time, upon the request of the said [*lady*], whether covert or sole, and at her expense, to exchange the said books, pictures, and plate, hereby assigned, or intended so to be, or any of them, for any other articles of plate of equal weight and value with the articles of plate proposed to be exchanged, or for any other books or pictures of equal value with the books or pictures proposed to be exchanged; *And* also to permit the articles from time to time received in exchange, to be altered or exchanged from time to time, as the said [*lady*] shall think fit, provided the same be not by any such alteration or exchange, diminished in weight or value; *And* as to the said furniture hereby assigned, or intended so to be, *It* is hereby agreed and declared, that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of the said furniture, *Upon trust* that the said [*trustees*], and the survivors or survivor of them, and the executors, administrators, and assigns of such survivor, *Do* and shall permit and suffer the said [*lady*] from time to time, and at all times during her life, to have, use, and enjoy the said furniture to and for her separate use, and as her own separate property, exclusively of the said [*gentleman*], or any future husband, and without being subject to the control, debts, interference, or engagements of the said [*gentleman*] or any future husband, and either by any note or writing whatsoever under her hand, whether covert or sole, or by her last will and testament in writing, or any writing in the nature of a will, or any codicil thereto to be by her (whether covert or sole) signed and published in the presence of, and attested by two or more witnesses, to dispose of the same, notwithstanding her coverture, to any person or persons whatsoever, and for any purpose or purposes whatsoever; *And* after the decease of the said [*lady*], *Upon* this further trust, that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

And as to the furniture,

upon trust to permit lady to enjoy the same for her separate use,

with power to dispose of the same;

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

shall, as soon as conveniently may be, absolutely sell and dispose of the said furniture, or so much thereof as shall not have been disposed of by the said [*lady*] under the power hereinbefore given or reserved to her for that purpose, for the most money that can be had or gotten for the same; *And* do and shall lay out and invest the money to arise from the sale of the said furniture, in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or at interest on government or real securities in England or Wales; *And* shall stand and be possessed of and interested in the said money, and the stocks, funds, and securities in which the same shall be invested, and the interest, dividends, and annual produce thereof, *Upon* and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, agreements, and declarations, as are hereinafter expressed and declared of and concerning the said sum of pounds three per cent. consolidated bank annuities, so transferred into the names of the said [*trustees*] as hereinbefore is mentioned, and the interest, dividends, and annual produce thereof, or as near thereto as the deaths of parties and other circumstances will then admit of; (*Covenant by* [B. B.] *that he hath done no act to incumber, see ante*, Vol. VII. p. 55:) AND THIS INDENTURE WITNESSETH, that in further obedience to the said recited order of the day of last, and in consideration of the said marriage, *It* is hereby agreed and declared between and by the parties to these presents, that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of and interested in the said sum of pounds three per cent. consolidated bank annuities, so transferred into the names of the said as hereinbefore is mentioned, *Upon trust*, (*to change securities, as ante*, p. 3.): *And* then upon trust that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, during the joint lives of the said [*gentleman*] and [*lady*] his wife, pay the interest, dividends, and annual produce of the said

and after her decease, upon trust to sell the same,

and invest the money in the stocks;

and stand possessed thereof upon the trusts hereinafter declared of the stock.

Fifth testatum, whereby it is agreed that the trustees shall stand possessed of the sum of —*l.* 3-per cent. stock,

upon trust to vary the securities,

and stand possessed thereof, upon trust to pay the interest to lady for her separate use.

OF REAL AND PERSONAL PROPERTY, BY A WARD OF COURT.

trust monies, stocks, funds, and securities, when and as the same shall from time to time become due, into the proper hands of the said [*lady*], for her sole and separate use and benefit, exclusively of the said [*gentleman*], and without being subject to his debts, control, interference, or engagements; *And* the receipts of the said [*lady*] alone, for the said interest, dividends, and annual produce, shall, notwithstanding her present coverture, be effectual discharges for the same; And it is hereby agreed and declared, that if the said [*lady*] shall, at any time or times, during the joint lives of herself and the said [*gentleman*], either with or without his concurrence, sell, mortgage, or charge the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, or otherwise dispose of the same by way of anticipation, or shall do or commit any act, whereby the said interest, dividends, and annual produce would, if this clause were not inserted, become vested in, or payable to any other person or persons whomsoever, *Then* and in any such case, the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, instead of paying the said interest, dividends, and annual produce, into the hands of the said [*lady*], or to the person or persons in whose favour she may have anticipated the same, do and shall thenceforth, during the joint lives of the said [*gentleman*] and [*lady*] his wife, pay, apply, and dispose of the said interest, dividends, and annual produce, when and as the same shall from time to time become due, in such manner as they or he shall think proper, for the personal maintenance and support or otherwise for the benefit of the said [*lady*] and her family; *And* if the said [*lady*] shall survive the said [*gentleman*], *Then upon this further trust*, that the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities to, or permit the same to be received by the said [*lady*], and her assigns, during the then remainder of her life; *And* from and immediately after the decease of the said [*lady*], and whether she shall survive the said [*gentleman*], or die in his lifetime, the

Her receipts to be sufficient discharges.

Agreement that if wife shall attempt to assign the dividends, trustees shall pay them for her maintenance and benefit, and that of her family.

and if the lady shall survive gentleman, then upon trust to pay the interest to her for the remainder of her life;

and after her death, the said trust-monies to be upon trust

OF REAL AND PERSONAL PROPERTY BY AWARD OF COURT.

for all the children of the marriage, except an eldest son.

said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, shall remain and be *In trust* for all and every the children and child of the said [*lady*], by the said [*gentleman*], (other than and besides an eldest or only son, who shall or may be for the time being entitled in possession or remainder, expectant upon the decease of the said [*lady*], to the said undivided shares, hereditaments, and premises, comprised in the settlement of the said [*lady's father*], or to the receipt of the rents, issues, and profits thereof); *And* to be divided between or amongst the said children, if more than one, in equal shares, as tenants in common; *But* if any one or more of the children of the said [*lady*], by the said [*gentleman*], (other than or besides an eldest or only son, so for the time being entitled as aforesaid,) being a son or sons, shall depart this life under the age of twenty-one years, or shall become the eldest or only son, so for the time being entitled as aforesaid, or being a daughter or daughters, shall depart this life under the age of twenty-one years, or shall marry under that age, without the consent of her or their guardian or guardians for the time being, *Then* as well the original share or shares of the child or children so dying, as aforesaid, or so becoming the eldest or only son entitled, as aforesaid, or so marrying, as aforesaid, as the share or shares, which by virtue of this present clause, shall have survived or accrued to him, her, or them, of and in the said trust monies, stocks, funds, and securities respectively, or so much thereof respectively as shall not have been previously applied for his, her, or their preferment or advancement in the world, by virtue of the power or authority hereinafter for that purpose contained, shall from time to time remain and be *In trust* for the survivors or survivor, or others or other of the said children, (not being an eldest or only son, so for the time being entitled as aforesaid,) and shall be divided between or amongst them, if more than one, in equal shares, as tenants in common; *And* if there shall be no child of the said [*lady*] by the said [*gentleman*] her husband, (other than or besides an eldest or only son so for the time being entitled as aforesaid,) or being such, he, she, or they shall, being a son or sons, die under the age of twenty-one years, or become the

Provision for survivorship and accruer.

And if there shall be no child who shall become entitled to any portion under the trusts aforesaid,

OF REAL AND PERSONAL PROPERTY BY A WARD OF COURT.

eldest or only son entitled as aforesaid, or being a daughter or daughters, die under the age of twenty-one years, or marry under that age without such consent as aforesaid, *Then* after the decease of such one of them the said [*gentleman*] and [*lady*] his wife, as shall first happen to die, and such failure of issue as aforesaid, the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, shall remain and be upon the trusts following, (that is to say); if the said [*lady*] shall survive the said [*gentleman*], *Then In trust* for the said [*lady*], her executors, administrators, and assigns, to and for her and their own absolute use and benefit; *But* if the said [*lady*] shall depart this life in the life-time of the said [*gentleman*], *Then In trust* for the person or persons who, under the statutes made for the distribution of the personal estates of intestates, would then be entitled to the personal estate of the said [*lady*], in case the said [*lady*] had survived the said [*gentleman*], and died possessed of the same intestate; *And* to be divided between or amongst the same persons respectively, if more than one, in the shares and proportions in which the same would under or by virtue of the said statutes be divisible amongst the said persons respectively: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*trustees*], and the survivors or survivor of them, and the executors, administrators, and assigns of such survivor, at any time or times after the decease of the said [*lady*], or in her life-time, with her consent in writing, and whether she shall be covert or sole, to levy and raise out of the said trust monies, stocks, funds, and securities, for the preferment or advancement in the world, or otherwise for the benefit of any son or sons of the said [*lady*] by the said [*gentleman*], (other than or besides an eldest or only son for the time being entitled as aforesaid,) any sum or sums of money, not exceeding in the whole, one moiety or equal half part of the then vested or then presumptive share or shares of such son or sons respectively in the said trust monies, stocks, funds, and securities, and the sum or sums which shall be so levied and

then, if lady shall survive gentleman, in trust for her absolutely; but if she shall die in life-time of gentleman, then in trust for the persons who would be entitled under the statute of distribution.

Provision for advancement of younger children.

OF REAL AND PERSONAL PROPERTY, BY A WARD OF COURT.

raised, shall be applied for the preferment, advancement, or benefit of such son or sons accordingly, notwithstanding his or their share or shares shall not then have become vested or payable, and shall be considered and taken by him or them respectively, in part satisfaction of such share or shares: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that the said [*trustees*] and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, after the decease of the said [*lady*], pay and apply the whole, or such part as they or he shall think fit, of the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, for the maintenance and education of the child or children, for whom a portion or portions is or are intended to be hereby provided as aforesaid, in the mean time, and until his, her, or their portion or portions, or any part thereof respectively, shall become payable. (*Accumulation clause for personal estate, as ante*, Vol. VII. *p.* 509): PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*lady*], in the event of her surviving the said [*gentleman*] her husband, and marrying again, and either before or after any such future marriage, by any deed or deeds, writing or writings, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil thereto in writing, or any writing in the nature of a will, to be by her signed and published in the presence of, and attested by the like number of credible witnesses, to appoint any part or parts of the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, not exceeding in the whole one moiety or equal half part thereof respectively, upon and for such trusts, intents, and purposes, and in such manner, in favor, or for the benefit of any such future husband and her issue by him, as she shall think proper: (*Clauses for converting and reconverting real and personal estate, as ante*, Vol. VII. *p.* 510; *and for changing trustees, as ante*, Vol. VII. *p.* 511, 512). IN WITNESS, &c.

Proviso for the maintenance of younger children.

Power to lady to appoint a moiety of the trust-monies to future husband and children, as she pleases.

OF PROPERTY TO THE SEPARATE USE OF WIFE.

MARRIAGE SETTLEMENT. First witnessing Part, *whereby Lady assigns Rent-charge upon Trusts for her Separate Use;* DECLARATION *whereby the Trusts of Stock are declared to be for the Separate Use of Lady:* Second witnessing Part, *whereby Gentleman covenants to permit Lady to enjoy all the Property, both Real and Personal, which she now has, or which she may hereafter possess, for her Separate Use.*

THIS INDENTURE, made the day of , BETWEEN [*lady*], of &c., the widow of [A. B.] deceased, of the first part; [*gentleman*] of, &c. of the second part; and [*trustees*] of, &c. of the third part; WHEREAS a marriage hath been agreed upon, and is intended shortly to be had and solemnized between the said [*gentleman*] and [*lady*]; AND WHEREAS by indentures of lease and release, bearing date respectively the and days of , the release being made or expressed to be made between the said [A. B.] deceased, of the first part; [J. E. M.], of the second part; the said [*lady*] (then [*maiden name*]), of the third part; [G. E. E.] and [J. S.], of the fourth part; [H. S.] and [J. D. B.], of the fifth part; and [T. M.] and [C. W.], of the sixth part; (being the settlement made previously to the marriage then intended, and afterwards solemnized, between the said [A. B.] deceased, and the said [*lady*], (then [*maiden name*], divers freehold manors, messuages, lands, tenements, and other hereditaments in the county of L., with their rights, members, and appurtenances, were assured and limited, (after certain uses, which have since determined), *To the use* that the said [*lady*], and her assigns, if she should happen to survive the said [A. B.], (which event hath happened) should receive

Parties.

Recital of agreement for marriage.

Indentures of lease and release, whereby certain freehold hereditaments were limited,

To the use that lady should receive a yearly rent of —*l.*, with usual powers;

OF PROPERTY TO THE SEPARATE USE OF WIFE.

and take during her life, an annual sum or yearly rent-charge of pounds, to be issuing out of the said manors, messuages, lands, tenements, and other hereditaments, to be for her jointure, and in bar of dower, and to be payable quarterly, on the four most usual days of payment in the year, and with the usual powers of distress and entry, and detention of possession and perception of rents, issues, and profits, for the recovery of the said annual sum or yearly rent-charge, in case the same should be in arrear; and subject thereto, *To the use* of the said [H. S.] and [J. D. B.], their executors, administrators, and assigns, for the term of two hundred years, upon the trusts in the said indenture of release and settlement mentioned, for better securing the payment of the said annual sum or yearly rent-charge;

and, subject thereto, to the use of trustees for 200 years, for securing the payment thereof;

that lady is entitled to stock and other personal estate, exclusively of money in hand.

AND WHEREAS the said [*lady*] is entitled to the sum of two thousand pounds, three per cent. consolidated bank annuities, and other personal estate and effects, exclusively of her money in hand, wearing apparel, jewels, trinkets, and other ornaments of her person; AND WHEREAS upon the treaty for the said intended marriage, it was (amongst other things) agreed that the said annuity or yearly rent-charge of pounds, and all the said personal estate and effects to which the said [*lady*] is entitled, as hereinbefore is mentioned, and also all the real and personal estate and effects to which at any time during the said intended coverture, she, or the said [*gentleman*] in her right, should or might become entitled, should be settled so as that the same respectively should, during the continuance of such coverture, be for the separate use, and at the absolute disposal of the said [*lady*]; (*Transfer of stock to trustees, as ante*, Vol. VII. *p.* 505, 506;)

Agreement to settle the same upon the lady for her separate use.

First testatum, whereby lady assigns

NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, *And also* of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*lady*] paid, at or before the sealing and delivering of these presents, (the receipt, &c.) SHE the said [*lady*], with the privity, consent, and approbation of the said [*gentleman*], (testified by his being a party to, and sealing and delivering these presents), *Hath* granted, bar-

gained, sold, and assigned, and by these presents *Doth* grant, bargain, sell, and assign, unto the said [*trustees*], their heirs and assigns, ALL THAT the annual sum or yearly rent-charge of pounds, so secured to the said [*lady*] and her assigns during her life, by the said indentures of lease and release and settlement of the day of , as hereinbefore is mentioned, and all arrears and future payments thereof, and all the powers and remedies whatsoever and wheresoever of her the said [*lady*], for recovering and compelling payment thereof, *And* all the estate, &c.; TO HAVE, HOLD, RECEIVE, and TAKE the said annual sum or yearly rent-charge of pounds, and all other the premises hereby granted and assigned, or intended so to be, unto and to the use of the said [*trustees*], their heirs and assigns, *In trust* for the said [*lady*], until the said intended marriage shall be had and solemnized; and from and immediately after the solemnization thereof, *Upon trust* that the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, do and shall, during the joint lives of the said [*gentleman*] and [*lady*], pay, apply, and dispose of the said annual sum, or yearly rent-charge of pounds hereinbefore granted and assigned, or intended so to be, to such person or persons only, and for such intents and purposes only, as the said [*lady*], notwithstanding her said intended coverture, and as if she were sole and unmarried, shall from time to time, either as the same should become due, or in the way of anticipation, by any writing or writings sealed by her with her own hand, direct or appoint; *And* in default of and until such direction or appointment, into the proper hands of the said [*lady*], for her sole and separate use and benefit, exclusively of the said [*gentleman*] her intended husband, and without being subject to his control, debts, interference or engagements; *And* the receipt or receipts of the said [*lady*], or of such person as she shall from time to time direct to receive the said annuity or yearly rent-charge, or any part thereof, shall, notwithstanding the marriage of the said [*lady*] with the said [*gentleman*], be an effectual discharge, or effectual discharges, for the money therein mentioned or acknowledged to be received; and if the said [*lady*] shall survive the said

OF PROPERTY TO THE SEPARATE USE OF WIFE.

rent-charge.

Habendum to trustees,

In trust for lady until marriage,

and after marriage, upon trust, during joint lives of gentleman and lady, to pay the rent-charge to such person as lady shall appoint;

and in default of appointment, to the separate use of lady;

her receipts o be sufficientt discharges.

OF PROPERTY TO THE SEPARATE USE OF WIFE.

[*gentleman*], then immediately after the decease of the said [*gentleman*], the said annual sum or yearly rent hereinbefore granted, or intended so to be, or so much thereof as shall not have been anticipated, shall be in trust for the said [*lady*], her executors, administrators, and assigns, for her and their own absolute use and benefit: AND the said [*lady*], with the privity, approbation, and consent of the said [*gentleman*] (testified as aforesaid), *Doth* irrevocably make, nominate, and appoint, and in her place and stead put the said [*trustees*], and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, to be the true and lawful attorney and attornies of her the said [*lady*], to ask, demand, sue for, recover, and receive, and of and from all and every the persons and person who are, is, or shall or may be liable to pay the said annuity or yearly rent-charge of pounds, hereinbefore granted and assigned, or intended so to be, and on the payment thereof, or of any part thereof, to give, sign, and execute acquittances, releases, or other discharges for the same respectively, and on non-payment thereof, or of any part thereof, to use such ways and means by distress, entry, action, suit, or by any other proceeding or proceedings at law or in equity, which they or he shall think proper, and for all or any of the purposes aforesaid, to appoint or employ one or more person or persons as attorney or attornies to them or him, and in all the acts, deeds, proceedings, matters, or things hereinbefore mentioned, to use the name of the said [*lady*], and generally to do, execute, and perform any act, deed, matter, or thing whatsoever relative to the premises, as fully to all intents and purposes whatsoever, as the said [*lady*] might or could have done in her own proper person, in case these presents had not been executed, and the said [*lady*] were to remain a widow and unmarried; *And* whatsoever the said [*trustees*], or the survivor of them, or the executors, administrators, and assigns of such survivor, shall lawfully do, or cause to be done, in or about the premises, the said [*lady*] *Doth* hereby for herself, her heirs, executors, and administrators, COVENANT, promise and agree, with and to the said [*trustees*], their executors, administrators, and assigns, to allow, ratify, and confirm; AND IT IS HEREBY AGREED AND DECLARED between and by the parties to

Appointment of trustees to be the attornies of lady for receiving the annuity,

and whatsoever the trustees shall lawfully do, lady will confirm.

Declaration, that trustees shall stand pos-

these presents, that the said [*trustees*], their executors, administrators, and assigns, shall stand and be possessed of, and interested in the said sum of two thousand pounds, three per cent. consolidated bank annuities, so transferred into the names of them the said [*trustees*], as hereinbefore is mentioned, and the dividends, interest, and annual produce thereof, *In trust* for the said [*lady*], her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; and from and immediately after the solemnization thereof, *Upon* and for the trusts, intents, and purposes hereinafter expressed and contained of and concerning the same, (that is to say); *Upon trust* that the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall either permit the said sum of two thousand pounds three per cent. consolidated bank annuities, to remain in its actual state of investment, or do and shall, at the request in writing of the said [*lady*], sell and dispose of the same, and lay out or invest the monies arising thereby in their or his names or name, in the parliamentary stocks or public funds of Great Britain, or at interest on government or real securities in England or Wales; and do and shall, at the like request in writing of the said [*lady*], alter and vary the said stocks, funds, and securities, for, into, or upon other stocks, funds, and securities of the like nature; *And upon this further trust*, that the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall pay, transfer, assign, or otherwise dispose of the said sum of two thousand pounds, and the interest, dividends, and annual produce of the monies arising from the sale thereof, and the stocks, funds, and securities in which the same for the time being shall be invested, and the dividends, interest, and annual produce thereof, to such person or persons, for such intents and purposes, and in such manner as the said [*lady*], notwithstanding her said intended coverture, by any deed or deeds, writing or writings, to be by her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of a will, or any codicil thereto, to be by her signed

OF PROPERTY TO THE SEPARATE USE OF WIFE.

sessed of the sum of —*l.* 3- per cents,

In trust for lady until marriage,

and then upon trust to continue the same upon its present security,

and dispose thereof, and invest the monies in other securities,

and alter and vary the same,

and pay the interest to such person as lady shall appoint;

OF PROPERTY TO THE SEPARATE USE OF WIFE.

and in default of appointment, to her separate use;

and published in the presence of, and attested by two or more credible witnesses, shall from time to time direct or appoint; *And* in default of and until such direction or appointment, and so far as any such direction or appointment, if incomplete, shall not extend, do and shall, during the joint lives of the said [*gentleman*] and [*lady*], apply and dispose of the interest, dividends, and annual produce of the said sum of two thousand pounds three per cent. consolidated bank annuities, or other monies, stocks, funds, and securities, into the proper, &c. (*to lady's separate use, see ante*, Vol. VII. *p.* 515); *And* from and immediately after the decease of either of them the said [*gentleman*] and [*lady*], the said sum of two thousand pounds three per cent. consolidated bank annuities, and the monies arising from the sale thereof, and the stocks, funds, and securities in which such monies shall for the time being be invested, and the dividends, interest, and annual produce thereof respectively, as shall have been unappointed and undisposed of by the said [*lady*], shall remain and be upon the trusts following, (that is to say); if the said [*lady*] shall survive the said [*gentleman*], *In trust* for the said [*lady*], her executors, administrators, and assigns, for her and their own absolute use and benefit; but if the said [*gentleman*] should survive the said [*lady*], then *In trust* for the executors and administrators of the said [*lady*], as part of her personal estate: AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said intended marriage, HE the said [*gentleman*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, by these presents, in manner following, (that is to say); that if the said intended marriage between him and the said [*lady*] shall take effect, he the said [*gentleman*] shall and will permit and suffer the said [*lady*] to have, use, wear, retain, and enjoy, to and for her own separate use, and as her own separate property, and without being subject to his control, interference, or engagements, and either by any writing or writings whatsoever, or without, or by her last will and testament in writing, or any writing in the

and after the decease of either of them the gentleman and lady, trust-monies shall remain,

if lady shall survive gentleman, In trust for lady absolutely;

but if gentleman shall survive lady, In trust for the executors or administrators of lady.

Second testatum, whereby gentleman covenants with trustees,

that if marriage shall take effect, he will permit lady to retain for her separate use her own property,

and to dispose as she shall think proper

nature of a will, or any codicil thereto, to be by her signed and published in the presence of, and attested by two or more credible witnesses, to give away and dispose, to any person or persons whomsoever, and for any purpose or purposes whatsoever, All or any of the horses, carriages, wines, and other articles and things now belonging to the said [*lady*], and also any jewels, trinkets, wearing apparel, and ornaments of the person of the said [*lady*], and also all monies, savings, accumulations, goods, and chattels personal, of all descriptions, which now are or hereafter may be received, made, or obtained by, and given or bequeathed to, and which actually have or hereafter shall come into the custody, hands, or possession of the said [*lady*], (except the said annual sum or yearly rent of pounds, and the said sum of two thousand pounds three per cent. consolidated bank annuities, and the dividends, interest, and annual produce thereof, in regard to which respectively such trusts are declared as aforesaid); *And* that he the said [*gentleman*], his executors, administrators, and assigns, shall and will permit and suffer the said [*lady*] to hold, use, and enjoy, to and for her separate use, and as her own separate property, and without being subject to his control, debts, interference, or engagements; *And* either by any deed or deeds, writing or writings, to be by her sealed and delivered in the presence of, and to be attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of a will, or any codicil thereto, to be by her signed and published in the presence of, and attested by three or more credible witnesses, as to the real estate, and by two or more credible witnesses, as to the leasehold lands and tenements, and other personal estate, to dispose of or appoint to any person or persons whomsoever, and for any estate or estates, purpose or purposes whatsoever, all such real estate, and also all such leasehold lands and tenements, as shall hereafter descend, or devolve to, or vest in the said [*lady*], or to or in the said [*gentleman*] in her right, *And also* all such other personal estate as shall hereafter devolve to or vest in the said [*lady*], or to or in the said [*gentleman*] in her right, or shall not actually come into the possession of the said

OF PROPERTY TO THE SEPARATE USE OF WIFE.

of all horses, &c.

and all her jewels and accumulations, which she now has or may hereafter have;

and that he will permit her to enjoy, for her separate use,

and to dispose of

all real and leasehold property,

and all other personal estate which may devolve upon lady.

OF PROPERTY TO THE SEPARATE USE OF WIFE.

Her receipts to be sufficient discharges,

and that gentleman will execute all necessary acts for effectually enabling lady to hold her property for her separate use,

and that if lady shall die testate, gentleman will permit her will to be proved.

[*lady*]; *And* that the receipt and receipts of the said [*lady*] for any rents, issues, profits, monies, goods, and other personal estate to which the said [*lady*], or the said [*gentleman*] in her right, may at any time or times hereafter become entitled, or of any person or persons whom she may direct or appoint to receive the same, shall be a good and effectual discharge and discharges to the person or persons paying or delivering the same; *And* that the said [*gentleman*] shall and will at all times hereafter, upon every request of the said [*lady*], do and execute, or cause to be done and executed, all such acts, deeds, and assurances as shall be necessary, and as her counsel shall advise and require, for the better and more effectually enabling the said [*lady*] to have, use, retain, hold, and enjoy, and to give away, dispose of, and appoint in manner aforesaid, and according to the true intent and meaning of these presents, the said annual sum or yearly rent-charge of pounds, and the said sum of two thousand pounds three per cent. consolidated bank annuities, and also the said real and personal estate and premises hereby covenanted and agreed to be for her separate use, and at her absolute disposal as aforesaid; *And* that if the said [*lady*] shall die testate in the life-time of the said [*gentleman*], then, and in such case, the said [*gentleman*], his executors or administrators, shall and will permit and suffer the will and codicils of the said [*lady*] to be proved by the executor or executors therein named. (*Trustees' receipts sufficient discharges; and clauses for their indemnity and reimbursement, as ante*, Vol. VII. *p.* 511.) IN WITNESS, &c.

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

FAMILY SETTLEMENT. First Witnessing Part, *whereby certain Freehold Hereditaments are Conveyed to a Trustee, to the Use that Two Sisters of Settlor may receive Annuities for their Lives, and subject thereto to the Use of Trustee until Eldest Nephew attains the Age of Twenty-one Years, and then to him for Life, without Impeachment of Waste; Remainder to the Use of Trustee to preserve Contingent Remainders; Remainder to First and other Sons of Nephew in Tail; Remainder to the Use of Trustee until Second Nephew shall attain the Age of Twenty-one Years, and then to the Use of the said Second Nephew for Life; Remainder to the Use of Trustee to preserve; Remainder to the Use of his Second Nephew's Sons in Tail; Remainder to Trustee until Niece shall attain Twenty-one, and then to the Use of her for Life; Remainder to the Use of Trustee to preserve; Remainder to the Use of her Sons in Tail; Remainder to the Use of Settlor's Right Heirs; Accumulation Clause; Power to Nephews and Niece to Lease for Twenty-one Years; Power to Nephews to Jointure; Power to Niece to grant Rent-charge to future Husband; Proviso as to the Amount of Jointures and Rent-charges; Powers to Nephews and Niece to Portion Younger Children.* Second Witnessing Part, *whereby Settlor assigns Leaseholds upon Trusts which will nearest correspond with Uses declared of the Freeholds.* Third Witnessing Part, *whereby Settlor assigns Furniture and Goods in Mansion House to Trustee, to go with the Freeholds, in the nature of* HEIR-LOOMS. Fourth

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

Witnessing Part, *whereby Settlor assigns all his Debts and all other his Goods whatsoever to Trustee, upon Trust to recover the same and then dispose thereof, and stand possessed of Proceeds, upon Trust to Purchase Freehold Hereditaments, and settle the same upon the Uses declared of the Freeholds; with Variations* (*a*) *for preserving the Enjoyment of Property to the furthest period allowed by Law.*

Parties.

Testatum, whereby settlor conveys premises to trustee,

THIS INDENTURE, made the day of , BETWEEN [*settlor*] of, &c. of the one part, and [*trustee*] of, &c. of the other part; WITNESSETH, that in consideration of the natural love and affection which he hath and beareth to his [*sisters*], [*nephews*], and [*niece*], and also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustee*] to the said [*settlor*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HE the said [*settlor*] *Hath*, &c. (*conveyed certain premises to*

Rule against perpetuities.

(*a*) It has long been a settled rule, that no person can limit or defer the enjoyment of property for a longer period than a life or lives in being, and twenty-one years beyond the death of the surviving tenant for life, (*Lloyd* v. *Carew*, Show. P. C. 137), and nine or ten months being the period of gestation; and two periods of gestation are allowed, one for the commencement of the period, and the other at its determination. *Long* v. *Benchall*, 7 T. R. 100. *Thellusson* v. *Woodford*, 4 Ves. 227. *Lane* v. *Holford*, Amb. 479. The exception to the rule is the limitation of an estate tail, which *may* exist for a longer period than above prescribed; but as the limitations over may be barred at any time by a recovery, it does not give rise to the mischiefs intended to be guarded against by this rule. See *Nichol* v. *Sheffield*, 2 B. C. C. 215.

This is the rule as to real estate; and until a late act it was also the rule as to the rents and profits of real estate, and the interest and produce of personal estate; so that these might be tied up for any number of lives in being, and twenty-one years after the death of the surviving life.

40 G. 3, c. 98.

This rule however was found insufficient to effect the ends for which it

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

trustee; Habendum to the said trustee and his heirs, as ante, Vol. VII. *p.* 402); *To* the uses, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, agreements, and declarations hereinafter mentioned, (that is to say); *To the use*, intent, and purpose that [*eldest sister*] of, &c. the sister of the said [*settlor*] and her assigns, may have, receive, and take from and out of the rents, issues, and profits of the said manors and other hereditaments hereby granted and released, or intended so to be, for and during the term of her natural life, one annuity, clear yearly rent and annual sum of three hundred pounds of like lawful money, to be paid and payable to her and them, at and upon the days and times, and in the manner hereinafter mentioned, and to be over and above another annuity, or clear yearly rent and annual sum of one hundred pounds, already settled upon her, and issuing out of the same premises, or out of some part or parts thereof; *And* to this further use, that [*second sister*], another sister of the [*settlor*], the wife of [A. B.] of, &c. (*might receive an annuity of two hundred pounds in the same manner*); *The* said several

To the uses hereinafter mentioned.

To the use that two sisters of settlor may receive annuities of —*l.* during their lives.

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was invented; and therefore it was altered, as it respects the income and produce, both of real and personal property, by the 40 Geo. 3, c. 98; and no person can now accumulate the rents and profits of real estate, or the produce of personal estate, for any longer period than, 1st, During his own life; 2dly, for twenty-one years from his own death; 3dly, During the minority of any person living at his death, or then in *ventre sa mere*; 4thly, During the minority of any person, who for the time being would be entitled to the rents or dividends, &c. so accumulated, if of age; but provisions for the payment of the debts of the settlor or devisor, or for raising portions for any child or children of the settlor or devisor, or any child or children of any person taking any interest under any conveyance or devise made by the settlor or devisor; or to any direction touching the produce of timber or wood upon any lands or tenements, are excepted from the operation of the act; and all such provisions may be made as if the act had not passed. And it is further provided, that the act shall not extend to heritable property in Scotland; and that it shall only affect wills made before the act, where the devisor should be living and of sound mind, after twelve months from the passing of the act. Under this act

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

annuities of two hundred pounds, and two hundred pounds, to be respectively paid and payable to them the said [*sisters*] respectively, by four even and equal quarterly payments, on the twenty-first day of December, the twenty-fifth day of March, the twenty-sixth day of June, and the twenty-ninth day of September, in each and every year, during the time and times that the same respectively are hereby made payable, free and clear from all taxes, charges, and impositions whatsoever, which now are or which hereafter may be charged upon the said manors and other hereditaments hereby granted and released, or intended so to be, and the first payment of the said annuities respectively to commence and be made on the twenty-first day of December now next ensuing: PROVIDED ALWAYS, and it is hereby expressed and agreed, that the said annuity of two hundred pounds, hereinbefore limited to the said [*second sister*], shall be paid and payable to such person or persons only, as she by some note or writing under her hand, and dated after the monies thereby directed

The same annuities to be paid quarterly.

Proviso that the said annuities shall be paid to separate use of sisters;

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a general clause of accumulation during the minority of every person who may become entitled under the settlement must be confined to some limited period allowed by law. *Marshall* v *Holloway*, 2 Swanst. 432. *Lord Southampton* v. *Marquis of Hertford*, 2 Ves. & Bea. 54.

But although accumulations are directed, extending to a longer period than that allowed by the act, the term will be apportioned; and that part which is valid under the act will be sustained, although the other portion should be void. *Griffith* v. *Vere*, 9 Ves. 127. *Longdon* v. *Simson*, 12 Ves. 295. But see *Southampton* v. *Marquis of Hertford*, 2 Ves. & Bea. 54. In *Marshall* v. *Lord Holloway*, 2 Swans. 450, Lord Eldon says, "the true doctrine seems to be, that if a trust for accumulation, which, prior to Lord Loughborough's act, would have been good, so much as is now within the act will be good, but the excess will be bad; but if there be a trust for accumulation, and part of it would have been bad before the act, that part remains bad, notwithstanding the act." See also *Tregonwell* v. *Sydenham*, 3 Dow, 194.

Haley v. *Bannister.*

In the case of *Haley and others* v. *Bannister and others*, 4 Madd. 275, where R. Bannister by his will, dated 11th July 1812, devised

to be paid, shall have actually become due and payable, and not otherwise, shall direct or appoint; such quarterly payment of the said last mentioned annuity to be actually made, but not by way of anticipation, exclusive of, and

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certain estates, after the decease of Aylmer Haley and his wife, to the use of all the children of his daughter Amelia Haley, then born, or hereafter to be born, as tenants in common, and to their respective heirs for ever. And the testator by the first codicil to his will, directed that 3000*l.* stock should be purchased in the names of his executors, and that they should receive and invest the dividends so as to accumulate them, until one of the said children should attain the age of twenty-one years; and upon his or her attaining that age, (if there should be only one child attaining that age), transfer the whole of the said two several sums to such only child, and if more than one such child be then living, to transfer to such children one equal part of the said annuity and accumulations, in proportion to the number of such children then living."

It was argued, so far as respected the present children, the accumulation directed was good, but that the accumulation directed by the will was contrary to the late statute (40 Geo. III. c. 98.) so far as it gave the accumulations to a child at present unborn on attaining twenty-one, in case of the deaths of all the present children before they attain that age; and *Griffith* v. *Vere*, 9 Ves. 127, and *Longdon* v. *Simson*, 12 Ves. 295, were cited. The *Vice Chancellor* said, "the statute prevents an accumulation of interest during the minority of an unborn child."

But if the principle of this case is to be followed, it would seem that all the usual accumulation clauses inserted in wills would be invalid, for they almost always provide for the accumulation of the rents and dividends, according to the nature of the property, during the life of unborn persons. It should be observed, that the point only came before the court incidentally, and may have been misreported; as it is conceived, it is clearly against the principle of the act; for first, it is provided by the act, that an accumulation may take place "during the minority, or respective minorities of any person or persons who shall be living or in *ventre sa mere* at the time of the death of the grantor or devisor;" and next, provisions for raising portions for any child of the devisor, *or any child or children of any person* taking any interest under the conveyance, settlement, or devise, "are excepted from the operation of the act;" and it is clear that the trust in *Haley* v. *Bannister* above mentioned, is within the period assigned for the accumu-

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

free from the debts, control, engagements, and power of any husband or husbands, which she the said [*second sister*] may happen to have, at any time or times; *And* that the (*receipts of the sisters shall be sufficient*

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lation of dividends before the act; *viz.* lives in being, and twenty-one years afterwards.

It may therefore be doubted whether this case will be followed hereafter, and it should therefore be received with caution. As in some degree in accordance with the above remark, the case of *Bacon* v. *Proctor*, 1 Turn. 31. may be mentioned.

Bacon v. *Proctor*.

In this case, Sir E. Bacon, who had charged two separate parts of an estate with two several sums of 2500*l.* as portions settled on his daughters and their children, charged the same estate by his will with the additional sums of 4000*l.* and 2000*l.*, and then devised the estate to trustees, in order, in the first place, by the rents, &c. to keep down the interest of the four several sums, and to lay out the residue of the rents in the funds, in order to accumulate until a sum should be raised sufficient to pay off these sums; and after the liquidation of these sums, the testator directed the trustees to "pay and apply the net rents and profits for the benefit of such person, of his own name, blood, and family, as for the time being should succeed to his title, to the end, intent, and purpose the said estate might be continued and preserved in his name and family so long as the rules of law and equity would permit;" and upon failure of issue of the body of the testator, if there should not be any such persons as should succeed to the title, then for the benefit of his own right heirs.

The testator died, leaving a son, who succeeded to the title; and the question was, Whether the trusts for accumulation were not too remote, as being for an indefinite period.

It was contended, that under the stat. 40 Geo. III. c. 98, the trusts for accumulation were void, inasmuch as the only accumulations excepted out of the statute were for the payment of debts and portions for *children*, and that grandchildren were not within the exception.

But it was held by *Graham*, B. (who was sitting for the Master of the Rolls), that the testator's intention went no further than to provide a fund for some specific debts and charges; and then that the persons entitled should take. The beneficial interest was only suspended until the debts and charges should be paid; therefore the statute did not apply; and if it did, these portions and charges would be within the exception."

Whether the term of twenty-

Although, as has been seen, it is well settled that an estate may be

discharges, as ante, Vol. VII. *p.* 413. *Here may be inserted powers of distress and entry, and for the perception of the rents, as ante,* Vol. VII. *p.* 406, 407); *And* OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

and subject thereto, To the

limited for a life or lives in being, and twenty-one years afterwards, *having reference to a minority,* it was always doubtful whether this term could be an absolute and positive term, not depending on a minority. This, however, seems to have been admitted in *Taylor* v. *Biddell,* 2 Mod. 289. *Stephens* v. *Stephens,* Ca. Temp. Talb. 232. *Goodman* v. *Goodright,* 2 Burr. 873. *Goodtitle* v. *Wood,* Willes, 211. *Heath* v. *Heath,* 1 B. C. C. 147. *Lloyd* v. *Carew,* Show. P. C. 137. *Gore* v. *Gore,* 2 P. W. 28. *Marks* v. *Marks,* 10 Mod. 420. The Court of Common Pleas, in *Beard* v. *Westcott,* 5 Taunt. 393. But a contrary opinion was expressed by Lord Alvanley, in *Thellusson* v. *Woodford,* 4 Ves. 227. 337; and see *Keeley* v. *Fowler,* Wilmot, 306. And in *Beard* v. *Westcott,* 5 B. & A. 801; Turn. & Russ. 25; S. C. the Court of King's Bench decided against the validity of such a term. one years may be an absolute term.

The point here alluded to was discussed at great length in the late case of *Bengough* v. *Edridge,* 1 Sim. 173, where hereditaments were devised to trustees upon trust to stand possessed thereof for the term of 120 years, to commence from the testator's death, if 28 persons, living at his decease, should so long live, and during the term of twenty years, to be computed from the expiration of the said term of 120 years, upon trust for the benefit of his nephew George Bengough, for a term of 99 years, if he should so long live, and the terms of 120 years and 20 years should so long continue; remainder in trust for the first and other sons of his said nephew successively; remainder in trust for the person who should then answer the description of heir male of the body of his nephew, with remainders over; and after the expiration of both terms, he directed that the trust estates should be conveyed to such person or persons as would have been then entitled thereto if the lands had been limited in strict settlement upon his nephews and their children. And he also directed that his trustees should accumulate the residue of his personal estate for twenty-one years, to commence from his decease. *Bengough* v. *Edridge.*

The Vice-Chancellor (Sir *J. Leach*) said, that although the rule of law be framed by analogy to the case of a strict settlement, whether twenty-one years was allowed in respect of the infancy of the tenant in tail, yet he considered it to be fully settled, that limitations by way of devise or springing use might be made to depend upon an absolute term of twenty-one years after lives in being.

By this case therefore it is decided, that the term of twenty-one years may be an absolute and positive term, not depending on a mi-

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

(subject thereto) *To the use* of the said [*trustee*], his heirs and assigns, until the said [*eldest nephew*] shall attain his age of twenty-one years; and when and so soon as he shall have attained his age of twenty-one years, and immediately from and after that time, *To the use* (*b*) of the said [*eldest nephew*] and his assigns, for and during the term of his natural life, without impeachment of or for any

use of trustee until eldest nephew shall attain twenty-one;

remainder to nephew for life;

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nority; and also that where a term is limited during any number of lives, and twenty years afterwards, the limitation will be valid, and that the trusts of such a term will be valid, although under them the issue of unborn persons will take—as to which point, see *ante*, p. 17. An appeal has however been made from the decision, so that this point is still open to discussion.

The case of *Bengough* v. *Edridge* has also decided, that lands may be limited during the lives of any number of persons, if they are all alive at the death of the testator; and this opinion is favoured by the *dicta* of M'Donald, C. B. and Lord Eldon, 11 Ves. 112.

It is clear, the term of twenty-one years need not be with reference to the minority of the donee, but of any other person. *Heath* v. *Heath*, 1 B. C. 147. *Beard* v. *Westcott*, 5 Taunt. 393. 5 B. & A. 801. I Turn. 25.

No perpetuity of leaseholds.

There can be no perpetuity of leaseholds for years determinable on lives, although there may be a renewal, which would probably be exercised under the tenant's right, because the estate is determinable with lives in being. *Mogg* v. *Mogg*, 1 Meriv. 654. And see *King* v. *Cotton*, 2 P. Wms. 674. *Oakes* v. *Chalfont*, Pollexf. 38; but limitations of freeholds to a succession of unborn sons for 99 years, if they should so long live, are all void, beyond the limitation to the first-born son. *Somerville* v. *Lethbridge*, 6 T. R. 213.

Limitation to nephew for 99 years, if he shall so long live.

(*b*) If it is desired to keep the estate in the family as long as possible, estates for 99 years may be given to the nephews and nieces, if they shall so long live, as follows:

"*To the use* of the said [*nephew*] and his assigns, for the term of ninety-nine years, to be computed from the time of his attaining the said age of twenty-one years, and thenceforth next ensuing, if he shall so long live, for his and their absolute use and benefit; *And* immediately after the determination of that estate, by forfeiture or otherwise, in his life-time, *To the use* of (*trustees to preserve, as above*)."

manner of waste; and immediately from and after the determination of that estate, by forfeiture or otherwise, in the life-time of the said [*eldest nephew*], *To the use* of the said [*trustee*], his heirs and assigns, during the life of the said [*eldest nephew*], *In trust* to preserve the contingent uses and estates hereinafter limited, from being defeated or destroyed; *And* for that purpose, to make entries and bring actions as occasion shall require, but nevertheless to permit and suffer the said [*eldest nephew*] and his assigns, to have, receive, and take the rents, issues, and profits of the said manor and other hereditaments, during his life, for his and their own use and benefit; *And* immediately from and after the decease of the said [*eldest nephew*], *To the use* of the first son of the body of the said [*eldest nephew*], and the heirs of the body of such first son lawfully issuing, *And* for default of such issue, *To the use* of the second, third, fourth, fifth, and all and every other the son and sons of the body of the said [*eldest nephew*] severally, successively, and in remainder, one after another, as they and every of them shall be in seniority of age or priority of birth, and of the several and respective heirs of the body and bodies of all and every such son and sons lawfully issuing, the eldest or elder of such sons and the heirs of his body issuing, being always to be preferred and to take before the youngest and younger of such sons, and the heirs of his and their body and respective bodies issuing; *And* for default of such issue, *To the use* of the said [*trustee*], his heirs and assigns, until the said [*second nephew*] shall attain his age of twenty-one years; and immediately from and after that time, *To the use* of the said [*second nephew*] and his assigns, for and during the term of his natural life; and immediately from and after the determination of that estate, by forfeiture or otherwise, in the life-time of the [*second nephew*], *To the use* of the said [*trustee*], his heirs and assigns, during the life of the said [*second nephew*], *In trust* to preserve the contingent uses and estates hereinafter limited, from being defeated or destroyed; *And* for that purpose, to make entries and bring actions as occasion shall require, but nevertheless to permit and suffer the said [*second nephew*] and his assigns to have, receive, and take the rents, issues, and

remainder to trustees to preserve;

remainder to his first and other sons in tail;

remainder to his second and other sons in tail;

remainder to the use of trustee, until second nephew shall attain twenty-one, and then To the use of second nephew for life; remainder to trustees to preserve contingent remainders;

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

profits of the said manors and other hereditaments during his life, for his and their own use and benefit; *And* immediately from and after the decease of the said [*second nephew*], *To the use* of the first son of the body of the said [*second nephew*], and the heirs of the body of such first son lawfully issuing; and for default of such issue, *To the use* of the second, third, fourth, fifth, and all and every other the son and sons of the body of the said [*second nephew*] severally, successively, and in remainder, one after another, as they and every of them shall be in seniority of age or priority of birth, and of the several and respective heirs of the body and bodies of all and every such son and sons lawfully issuing, the eldest and elder of such sons and the heirs of his body issuing, being always to be preferred, and to take before the youngest and younger of such sons and the heirs of his and their body and respective bodies issuing; and for default of such issue, *To the use* of the said [*trustee*], his heirs and assigns, until the said [*niece*] shall attain her age of twenty-one years; and when and so soon as she shall attain her age of twenty-one years, *To the use* of the said [*niece*] and her assigns, for and during the term of her natural life, without impeachment of or for any manner of waste; and immediately from and after the determination of that estate by forfeiture or otherwise in the life time of the said [*niece*], *To the use* of the said [*trustee*], his heirs and assigns, during the life of the said [*niece*], *In trust* to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions as occasion shall require; *But* nevertheless to permit and suffer the said [*niece*] and her assigns to have, receive, and take the rents, issues, and profits of the said manor and other hereditaments, during her life, for her and their own use and benefit; *And* immediately from and after the decease of the said [*niece*], *To the use* of the first son of the body of the said niece, and the heirs of the body of such first son lawfully issuing; and for default of such issue, *To the use* of the second, third, fourth, fifth, and all and every other the son and sons of the body of the said [*niece*], severally, successively, and in remainder, one after another, as they and every of them

remainder to the use of his first son in tail;

remainder to his second and other sons in tail;

remainder to niece until she shall attain twenty-one,

to the use of niece for life;

remainder to trustee to preserve;

remainder to the use of her first son in tail;

remainder to the use of her second and other sons in tail;

shall be in seniority of age or priority of birth, and of the several and respective heirs of the body and bodies of all and every such son and sons lawfully issuing, the eldest and elder of such sons and the heirs of his body issuing, being always to be preferred and to take before the younger of such sons, and the heirs of his and their body and respective bodies issuing (*c*); and for default of such issue, *To the use* of the said [*settlor*], his heirs and assigns for ever; (*Accumulation clause, as ante*, Vol. VII. *p.* 410;) PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that it shall and may be lawful to and for the said [*eldest nephew*], [*second nephew*], and [*niece*], as, and when by virtue of the limitations hereinbefore contained, they shall successively and respectively be in the actual possession of and entitled to the rents, issues, and profits of the said manors and other hereditaments hereby granted and released, or intended so to be, during their respective lives; and also to and for the said [*trustee*], his heirs and assigns, during the

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

remainder to the use of settlor in fee.

Power to nephews and nieces, when in possession, and for trustees during their respective minorities, to lease.

(*c*) If it is wished to keep the estate as long as possible in the family:

Provisions for giving estates for life to tenants in tail.

"PROVIDED ALWAYS, that if the said [*nephews*] and [*niece*] shall respectively have any son or sons born in the life-time of the said [*settlor*], the estate and estates tail to which he and they would respectively become entitled in the said manors and other hereditaments, shall absolutely cease and determine, and in lieu thereof, such son or sons respectively shall, in the manner, order, and course, in which he or they would have taken estate or estates tail, take life estates, with remainder to the said [*trustee*] hereinbefore named, and his heirs, during their lives respectively, *In trust* to preserve the contingent remainders, with remainder to his and their respective first and other sons in tail."

It should be observed, that a general power to trustees on the birth of the sons of the tenant for life therein named, to revoke the uses limited to those sons in tail, and to limit the uses to such sons for life, remainder to the first and other sons of such sons severally and successively in tail male, has been holden to be void, as tending to a perpetuity. See 5 B. P. C. 592.

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

respective minorities of the said [*nephews*] and [*niece*], when and as they shall be in the actual possession of the said manor and other hereditaments, by any indenture, &c. (*Power to lease for twenty-one years, as ante*, Vol. VII. *p.* 424): PROVIDED ALSO, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*eldest nephew*] and [*second nephew*], as, and when by virtue of the limitations hereinbefore contained, they shall be successively and respectively in the actual possession of and entitled to the rents, issues, and profits of the said manors and other hereditaments hereby granted and released, or intended so to be, during their respective lives, by any deed or deeds, instrument or instruments in writing, to be by him or them respectively sealed and delivered in the presence of and attested by two or more credible witnesses, (but subject and without prejudice to the said yearly sums of two hundred pounds, one hundred pounds, and two hundred pounds, as hereinbefore is mentioned), to limit or appoint to any woman or women respectively, whom the person making the appointment shall or may marry, for her or their life or respective lives, and for her or their jointure or respective jointures, and in bar or without being in bar of her or their dower or dowers, and either before or after marriage, any annual sum or annual sums of money, or yearly rent-charges, not exceeding in the whole the yearly sum of pounds of lawful money of Great Britain and Ireland, to be issuing and payable out of, and charged and chargeable upon all or any part of the said manors, and other hereditaments hereby granted and released, or intended so to be, with their rights, members, and appurtenances, clear of all taxes, and without any deduction whatever, and to be paid in such manner as to the person making the appointment shall seem fit; and for the purpose of securing the annual sum or yearly rent-charge, or annual sums or yearly rent-charges, so to be limited and appointed as aforesaid, to limit or appoint to any woman or women respectively to whom the said annual sum or yearly rent-charge, or annual sums or yearly rent-charges, shall be so limited and appointed as aforesaid, usual powers and remedies for recovering and enforcing payment thereof respectively by distress and entry upon, and perception of

Power to nephews to jointure.

the rents and profits of the hereditaments which shall be so charged with the said annual sum or sums, or yearly rent-charge, or yearly rent-charges, and also to limit and appoint the hereditaments so to be charged as aforesaid to any person or persons whomsoever, for any term or terms of years, with or without impeachment of waste, as to the person making the appointment shall seem fit; but so that every such term or terms of years (if any such shall be limited) be made to determine on the death of the woman or women, for the benefit of whom the same shall be created, and the payment of the arrears of her or their rent-charge or rent-charges, and the expenses incurred by the nonpayment thereof: PROVIDED ALSO, and it hereby agreed and declared between and by the parties hereto, that it shall and may be lawful to and for the said [*niece*] from time to time, during her life, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered in the presence of and attested by two or more credible witnesses, to grant and appoint unto the use of any husband whom she may marry, for and during the life of such husband, any annual sum or yearly rent-charge, not exceeding in the whole the clear annual sum or yearly rent-charge of pounds of lawful money of Great Britain and Ireland, to be issuing out of and charged and chargeable upon all or any part of the same manor and other hereditaments, and to be paid at such times, and at such place or places, and in such manner, and with such powers and remedies by distress, entry, and perception of the rents, issues, and profits of the same hereditaments, and with such term or terms of years for the better securing the payment thereof, to take effect immediately after the decease of the said [*niece*], and such grant and appointment to be made either before or after such intermarriage, as to the said [*niece*] shall seem meet; PROVIDED ALWAYS, it is hereby agreed and declared between and by the said parties to these presents, that the said manors and other hereditaments shall not at one time be subject or liable to the payment of any annual sum or annual sums, or yearly rent-charge or yearly rent-charges, by virtue of the powers aforesaid, exceeding in the whole the annual sum of pounds, so that if by virtue or in exercise of

Power to niece to grant rent-charge to any husband with whom she may intermarry.

Proviso limiting amount of jointures and rent-charges.

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

the aforesaid powers of jointuring or granting rent-charges, or any of them, the said hereditaments, or any part or parts thereof, would, in case this proviso had not been inserted, be charged with a greater annual sum for jointures and rent-charges than the said sum of pounds, the payment of the sum occasioning such excess, or such part thereof as shall occasion the same, shall during the time of such excess be suspended: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*eldest nephew*], [*second nephew*], and [*niece*], as and when by virtue of the limitations hereinbefore contained, they shall successively and respectively be in the actual possession, and entitled to the rents, issues, and profits of the said manors and other hereditaments hereby granted and released, or intended so to be, during their respective lives, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by him, her, or them sealed and delivered in the presence of and attested by two or more credible witnesses, from time to time, to subject and charge all or any part of the said manors and other hereditaments hereby granted and released, with their rights, members, and appurtenances, to or with the payment of any sum or sums of money, for the portion or portions of the child or children of the person making the appointment, (other than and besides an eldest or only son for the time being entitled to the said manors and other hereditaments hereby granted and released, or intended so to be,) not exceeding in the whole the sum of pounds of, &c. with interest for the same, at any rate not exceeding five pounds for every one hundred pounds by the year, to be paid to or shared and divided between and amongst all and every, or any one or more of the children of the person making the appointment, (other than and not being an eldest or only son for the time being entitled as aforesaid,) at such age, day, or time, or respective ages, days, or times, and if more than one, in such parts, shares, and proportions, and with such conditions, restrictions, and limitations over for the benefit of some or one of the same children, (other than or not being any of them an eldest or

Power to nephews and nieces to portion younger children.

only son so entitled as aforesaid,) and in such manner as the person making the appointment shall appoint; *And* that for the purpose (*Power to limit term, as ante*, Vol. VII. *p.* 445. *See Powers of Sale, Exchange, and Special Powers*, Vol. VII. *p.* 435, *and* INDEX; *Assignment of leaseholds to same trustee; Habendum, &c. as ante, p.* 46); unto the said [*trustee*], his executors, administrators, and assigns, henceforth, during all the residue and remainder now to come and unexpired of the several and respective terms of years for which the said premises hereby assigned, or intended so to be, or any of them, are or is now held, subject to the payment of the rent and rents, and to the performance of the several covenants and agreements reserved and contained in the several and respective indentures of lease under which the same respectively are now held, and henceforth on the part and behalf of the tenants or lessees to be paid, done, performed, and kept, but upon and for such and the same trusts, ends, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, and declarations, as are hereinbefore mentioned, expressed, declared, and contained of and concerning the said manors and other hereditaments hereby granted and released, or intended so to be, or as near thereto as the different natures of the same estates and the rules of law and equity will admit: (*Third witnessing part, whereby, in consideration of ten shillings, settlor assigns to trustee*), ALL and singular the household goods and furniture, plate, beds, bedding, paintings, pictures, prints, printed books, manuscripts, painted glass, linen, and other articles which are now being in, upon, or about the said capital messuage or mansion-house, called as aforesaid, *And* all the right, &c. TO HAVE, hold, receive, and take the said household furniture, goods, plate, beds, bedding, paintings, pictures, prints, printed books, manuscript, painted glass, linen, and other articles hereby assigned, or intended so to be, unto the said [*trustee*], *Upon trust* nevertheless for the sole use and benefit of the person or persons, who for the time being shall be entitled to the said manor and other hereditaments, under or by virtue of the limitatoins thereof hereinbefore contained; *And* for that purpose, that he the said [*trustee*], his executors, administrators,

Second witnessing part, whereby leaseholds are assigned to trustee, upon trusts which will nearest correspond with uses declared of freeholds.

Third witnessing part, whereby settlor assigns all his goods and furniture in mansion house, to trustee,

Habendum to the use of the persons, who, under the limitations aforesaid, shall be entitled to the freeholds;

and upon trust for that purpose

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

to deliver the same to the person entitled to the freeholds, on his signing an inventory thereof;

and assigns, do and shall, from time to time, deliver, or cause to be delivered, the same premises hereby assigned, or intended so to be, and every of them, unto the person who shall be for the time being in the possession of the said freehold hereditaments and premises under the limitations aforesaid, for his or her own use, during such time as he or she shall remain in possession of the said freehold hereditaments and premises by virtue of the limitations aforesaid, upon his or her signing an inventory or schedule of the same household goods or furniture, and undertaking to deliver, or cause the same to be delivered, when he or she shall quit the possession of the same freehold hereditaments and premises, unto the said [*trustee*], his executors or administrators, or to such person or persons as he or they shall direct or appoint, whole and undefaced, reasonable use and wear thereof in the mean time, and casualities by fire, only excepted: the same premises hereby assigned, or intended so to be, and every part thereof, being to be considered as, and to be in the nature of heir-looms, and to attend upon and go along with the said manor, mansion house, and other freehold hereditaments and premises hereby granted and released, or intended so to be: (*Fourth Witnessing Part, whereby, in consideration of ten shillings, settlor assigns to trustee,*) ALL and every the rents and arrears of rent, debt and debts, sum and sums of money, and securities for money, now due and owing to him the said [*settlor*], from any person or persons whomsoever, *And also* all and every the horses (*d*), carts, carriages, chariots, cattle, hay, corn and growing crops, wines, spirits, liquors, and all and every other the personal estate and effects whatsoever and wheresoever, of him the said [*settlor*], not hereinbefore assigned, toge-

and that the same may be in the nature of heir-looms.

Fourth witnessing part, whereby rents and debts of settlor are assigned to trustee, and all goods whatsoever.

(*d*) A settlement executed before marriage, and in consideration thereof, may be made of moveable chattels belonging to the husband; nor will the absence of an inventory, or the fact of the settlor being indebted at the time of the settlement, even with the knowledge of the wife, nor the joint possession which he has of the chattels, invalidate the settlement. *Campion* v. *Cotton*, 17 Ves. 263. 271. And see *Randall* v. *Willis*, 5 Ves. 262. *Lewis* v. *Madocks*, 8 Ves. 150. 17 Ves. 48.

ther with all and every the rights, members, and appurtenances thereto belonging; *And* all the right, &c.; To HAVE, HOLD, RECEIVE, AND TAKE the said rents, debts, horses, carts, personal estate and effects, and all and singular other the premises hereby assigned, or intended so to be, with their rights, members, and appurtenances, unto the said [*trustee*], his executors, administrators, and assigns absolutely, but upon the trusts, intents, and purposes hereinafter declared, (that is to say); *Upon trust* that he the said [*trustee*], his executors, administrators, and assigns, do and shall, with all convenient speed, collect, get in, recover, receive, and enforce the payment of all and every the said rents, arrears of rent, debt and debts, sum and sums of money, now due and owing to the said [*settlor*], hereby assigned, or intended so to be, and do and shall sell and convert into money, the said horses, carts, and personal estate and effects; *And* do and shall, with all convenient speed, lay out and invest the monies arising therefrom, in the purchase of or upon freehold estates of inheritance, to be situate in England, and settle and assure, or cause to be settled and assured, the lands and hereditaments so to be purchased, to such and the same uses, trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, conditions, and agreements, as are in and by these presents limited, expressed, and contained of and concerning the freehold manors and other hereditaments hereby granted and released, or intended so to be, or as near thereto as the death of parties and other intervening circumstances will admit, and until a purchase shall be found, do and shall (*invest the produce in the funds, and vary the securities, as ante, p.* 2, 3. *Trustee clauses, as ante,* Vol. VII. *p.* 445—447.) IN WITNESS, &c.

OF FREEHOLDS, LEASEHOLDS, FURNITURE, AND DEBTS.

Habendum to trustee, upon the trusts hereinafter mentioned:

upon trust to collect the same, and convert them into money,

and invest the produce.

OF FEES OF OFFICES.

SETTLEMENT, *whereby Settlor covenants with Trustees to do all necessary Acts to enable Trustees to receive the Fees of certain Offices which he holds, upon Trusts for the Payment of the Junior Clerks in One of his Offices; then for the Payment of his Debts; then to pay Premiums on Insurance already effected, and effect a fresh Insurance, and pay Premiums thereupon; then to pay the Charges of Executing the Deed; and as to the Residue, (not exceeding a certain Sum,) in Trust as to One-eighth for his Children, to accumulate for their Benefit; and as to One-third of the Remainder of the Residue, upon Trust for the Separate Use of the Wife; and as to the other Two-thirds, upon Trust for the Maintenance of the Children; and if any Residue shall remain, upon Trust to effect a fresh Insurance, and subject thereto, apply the same upon Trusts declared of the Residue of the Whole.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*settlor*] of, &c. of the first part; [W. B.] of, &c. of the second part; and [*creditors*] of, &c. of the third part: WHEREAS the said [*settlor*] is now in the possession and enjoyment of a certain office or situation in the office, and of a certain other office or situation as clerk, in the office; (*Then recite that an insurance has been effected on the life of the settlor, as ante, p.* 32); AND WHEREAS the said [*settlor*] is indebted to [*creditor*] in the sum of pounds, and to [*other creditor*] in the sum of pounds, &c. &c.;

That settlor is possessed of certain offices,

and that settlor is indebted in the sum of —*l.*,

(*a*) As to the assignment of fees of office, see Vol. VII, p. 328.

OF FEES OF OFFICES.

AND WHEREAS for the payment and satisfaction of the said debts, and for making some provision for the family of the said [*settlor*], it hath been agreed that the said [*settlor*] should enter into the covenants hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said arrangement, and in consideration of the premises, HE the said [*settlor*], with the privity and approbation as well of the said [W. B.] as the said several persons parties hereto, of the third part, (testified by their respectively executing these presents,) *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, in manner following, (that is to say); that from and after the execution of these presents by him the said [*settlor*], and thenceforth so long as he shall continue to possess or exercise the said several offices or places of , &c. or any or either of them, he the said [*settlor*] shall and will stand and be possessed of and interested in, and perform the duties of each of the said several offices or places so by him possessed or exercised as aforesaid, for the purpose of performing and satisfying the several trusts hereby created and hereinafter declared of and concerning the fees, profits, emoluments, and salaries of the said several offices and places, and for no other intent and purpose whatsoever; *And* to the end and intent that all the fees, profits, emoluments, and salaries of or to arise from the said several offices or places respectively, which he the said [*settlor*] shall or may be entitled to take or receive, or to have the charge of, shall thenceforth so long as the said [*settlor*] shall so possess or exercise the said several offices or places, or any or either of them, be received by, or be paid to them the said [*trustees*], their executors and administrators; *And* that he the said [*settlor*] shall and will authorize and empower, and shall and will do all acts whatsoever which may be necessary to authorise and empower them and him to receive the same fees, profits, emoluments, and salaries, and shall not nor will, so long as any of the trusts hereby created in regard to the same shall remain unperformed, receive or apply the said fees, profits, emoluments, and salaries, or any of

and agreement to enter into covenant.

Testatum, whereby settlor

covenants with trustees, that after the execution of this indenture, so long as he shall continue to hold his offices, he will perform the duties thereof, in order that the trusts hereby created may be satisfied;

and to the intent that the fees may be received by trustees,

settlor will do all necessary acts to empower them to receive them, upon the trusts hereinafter declared;

OF FEES OF OFFICES.

them, or any part thereof respectively, to and for his own use, nor do any act to prejudice or lessen the same, or to defeat or prevent the same from being received and applied, as far as he may be entitled thereto, as aforesaid, *Upon* and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same; *And* that he the said [*settlor*] shall and will, at all times hereafter, while he shall possess the said several offices and places, discharge and execute the duties thereof respectively, to the best of his abilities; *And also* shall and will, when and so often as he shall be thereunto required by the said trustees or trustee for the time being acting in the trusts of these presents, or any one or more of them, make and deliver to them or him, a statement or account in writing of the fees, profits, emoluments, and salaries thereof, such accounts to be signed by him the said [*settlor*], and verified by such vouchers as may reasonably be required to be produced, and as circumstances will admit; AND for the better and more effectually enabling the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, to receive the fees, profits, emoluments, and salaries of the respective offices or places aforesaid, he the said [*settlor*] hath constituted the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, to be the true and lawful attornies or attorney of him the said [*settlor*], either in their or any or either of their own names, or in the name of the said [*settlor*], as shall be thought most proper and convenient, *But* upon the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same, to demand, sue for, recover, and receive of and from all and every such person and persons, public board or public boards, and in particular from the clerks or other officers respectively attached to the said several offices aforesaid, all the fees, profits, emoluments, and salaries of the same several offices or places, and each and every of them, which henceforth shall from time to time become due, or payable to, or be in the charge of the said [*settlor*], or which he shall be entitled to receive by any means whatsoever; *And* generally for them the said [*trustees*], and the survivor of them,

and that he will discharge all the duties of his office;

and will deliver to the trustees an account in writing of the fees thereof.

Appointment of trustees to be the attornies of settlor to receive and demand the fees.

and the executors and administrators of such survivor, to act in the premises as fully and effectually to all intents and purposes whatsoever, as he the said [*settlor*] might or could do, or lawfully have done, if these presents had not been executed: *And* the said [*settlor*], *Doth* (*covenant to ratify and confirm, as in* Vol. VII. p. 15): AND it is hereby agreed and declared between and by the parties hereto, and in particular the said [*settlor*] doth hereby COVENANT, promise, and agree, with and to the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, that they the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, shall stand possessed of, and interested in the said fees, profits, emoluments, and salaries, of, or arising from, the several offices and places aforesaid, so far as the said [*settlor*] is entitled therein respectively, when and as the said fees, profits, emoluments, and salaries, respectively, shall come to the hands of the trustee or trustees, upon or for the trusts, intents, and purposes, hereinafter expressed and declared of and concerning the same, (that is to say); *Upon trust*, that the trustees or trustee acting in the trusts of these presents, do and shall, in the first place, by, with, and out of the said monies, fees, profits, emoluments, and salaries, or any of them, pay to the junior clerks of the office, such balances or sums of money as became due and payable by the said [*settlor*], in respect of his said office of the chief clerk of , at Christmas last; *And* also all such sum or sums of money as shall, from time to time, during the continuance of the trusts hereby created, be due and payable by the said [*settlor*], to the said junior clerks of , in respect of the same office; *And* in the next place, by, with, and out of the said fees, profits, emoluments, and salaries, or any of them, pay, or cause to be paid to the said [*creditor*], the said principal sum of pounds, and to the said [*other creditor*] (*b*), the

OF FEES OF OFFICES.

Agreement and covenant by settlor that trustees shall stand possessed of the fees,

upon trust

to pay to the junior clerks of the office the sums already due, and which shall hereafter become due;

and in the next place pay certain sums to various creditors;

(*b*) Where the creditors are numerous, it is better to say, "the several persons whose names, residences, and trades and professions, are written or mentioned in the schedule hereunder written or hereunto annexed."

Numerous parties.

OF FEES OF OFFICES.

said principal sum of pounds, so remaining due and owing to them, as aforesaid, by four equal quarterly payments, or instalments of pounds each, on the twenty-fifth day of March &c. in every year, until the whole of the said sum of pounds shall be fully paid and satisfied, together with interest, at and after the rate of five pounds per centum per annum, from the twenty-fourth day of June next, or so much, and such part of the said sum of pounds, as shall from time to time remain due and unpaid; the first of such quarterly payments to begin and be made on the twenty-fifth day of March next ensuing the date of these presents; *And* also do and shall, by, with, and out of the said fees, profits, emoluments, and salaries, or any of them, pay and discharge the annual premiums or monies, which shall or may from time to time be payable or necessary for the purpose of keeping on foot the said policy of assurance for pounds, effected in the name and on the life of the said [*settlor*], as aforesaid; *And* do and shall thereout, when and as the monies to be received by them, as aforesaid, shall amount to a competent sum for that purpose, effect, in the names of the said [*trustees*], or the survivor of them, and the executors and administrators of such survivor, an insurance on the life of the said [*settlor*], in the insurance office, or in such other office or offices for insurance of lives, as they or he shall think proper, for the the full sum of pounds; *And* do and shall, yearly and every year, during the life of the said [*settlor*], and after such last mentioned assurance shall have been effected as aforesaid, by and out of such fees, profits, emoluments, and salaries, or any of them, pay and discharge the annual premiums and other monies which shall or may, from time to time, be payable or necessary, for the purpose of keeping on foot such last mentioned policy of insurance, so to be effected on the life of the said [*settlor*] as aforesaid; *And* also do and shall, by, with, and out of the said fees, profits, emoluments, or salaries, or any of them, pay, satisfy, and discharge, all and every the costs, charges, and expenses, of preparing and executing these presents; and in and about the arrangements, and negociations for the arrangements intended to be hereby effected,

these sums by instalments;

and interest for the same;

and then pay the annual premiums due on policy;

and effect a fresh insurance in the sum of —*l.* on the life of the settlor,

and pay the annual premiums due thereupon,

and all the expenses of executing these presents;

and in performing the trusts hereby intended to be created, or otherwise relating to these presents; *And* subject to all such payments as aforesaid, as to all the rest, residue, and remainder of the said fees, profits, emoluments, and salaries, from time to time to be received by the said [*trustees*], to the extent of pounds per annum, and so that such residue do not exceed a clear annual sum of pounds, over and besides the monies immediately applicable for any of the purposes aforesaid, but without estimating future payments to be made in pursuance of the said trusts, do and shall stand and be possessed thereof, upon the trusts, and for the intents and purposes hereinafter expressed and declared of and concerning the same, (that is to say); as to, for, and concerning one undivided eighth part or share of such residue, the whole of such residue not exceeding the clear annual sum of pounds, *Upon trust* that they the said [*trustees*], and the survivor of them, do and shall pay and apply the same, from time to time, to and for the benefit and advantage, and for the advancement in the world of all or any one or more of the child or children of the said [*settlor*] by the said [M.] his wife, as the said trustees or trustee for the time being, shall in their or his discretion, with the consent in writing of the said [W. B.], or his personal representative or representatives for the time being see fit, *And* in the mean time, and until such application thereof, and as to so much and such part thereof as may remain unappointed, to accumulate the same at interest, it being the intention of the parties, that no part thereof shall be applied or be applicable without such consent as aforesaid, but that the same shall be kept in reserve and accumulated from year to year, without the voluntary consent of the said [W. B.], or his personal representatives or representative for the time being; *And* as to, for, and concerning one undivided third-part or share of the remainder of such residue as aforesaid (the whole of such residue not exceeding the clear annual sum of pounds as aforesaid), *Upon trust* that the said trustees or trustee for the time being do and shall, yearly and every year during the joint lives of the said [*settlor*] and [M.] his wife, pay the same by equal quarterly payments, on the

OF FEES OF OFFICES.

and subject thereto, as to the residue of such fees,

upon the trusts hereinafter contained:

as to one eighth, In trust for the children of settlor by his present wife, as trustees shall see fit, and to accumulate any surplus;

and one-third of the remainder of the residue, upon such trusts as wife of settlor shall appoint;

OF FEES OF OFFICES.

twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December in every year, to such person or persons, and for such intents and purposes only, and in such manner, as the said [M. B.], notwithstanding her coverture, shall, by any note or writing under her hand, from time to time direct or appoint, but not so as to deprive herself of the benefit thereof by any gift, sale, mortgage, charge, or otherwise in the way of anticipation; *And* in default of such direction or appointment, into the proper hands of the said [M. B.], for her sole, separate, and peculiar use and benefit, exclusively of and without being in anywise subject or liable to the debts, controul, interference, or engagements of the said [*settlor*]; *And* the receipt or receipts in writing of the said [M. B.], or of such person or persons as she shall from time to time appoint to receive any quarterly payment of the said third part of the said residue, or any part thereof, shall, notwithstanding her coverture, be an effectual discharge or effectual discharges for the money therein expressed or acknowledged to be received; *And upon this further trust*, that the trustees and trustee for the time being do and shall, during the joint lives of the said [*settlor*] and [M.] his wife, pay, apply, and dispose of the remaining two-third parts of the said remainder of such residue as aforesaid of the said fees, profits, emoluments, and salaries, (the whole of such residue not exceeding the clear yearly sum of pounds); *And* in case the said [M. B.] shall depart this life in the life-time of the said [*settlor*], *Then* do and shall, from and after her decease in his life-time, and during the then remainder of his life, pay, apply, and dispose of the whole of the remainder of such residue as aforesaid of the said fees, profits, emoluments, and salaries, in such manner for the maintenance, education, and support, or otherwise for the benefit of the children of the said [*settlor*] by the said [M.] his wife, as the trustees or trustee for the time being shall in their or his discretion think proper, so nevertheless as that each of the said children shall from time to time have an equal share thereof paid to or for his or her benefit, and so also that for and during so long a time as [C.], [M.], and [J.], the three daughters of the said [*settlor*] by the said

and in default of any direction, to wife for her separate use;

the receipts of wife to be sufficient discharges;

and as to the remaining two-thirds, during the lives of settlor and his wife;

and if wife shall die first,

Upon trust to pay the same for the benefit of the children of the marriage, as the trustees shall see fit;

but so that every child shall have an equal share thereof;

and during such time as settlor's daughters shall be under age,

[M.] his wife, shall respectively be under the ages of twenty-one years, and shall continue to reside with and be maintained by her, it shall be lawful for the said [*trustees*], and the survivor of them, his executors and administrators, if they or he shall so think fit, to pay the shares of each of the said [C.], [J.], and [M.] respectively to the said [M. B.] to be applied by her in and for their respective maintenance and education; *And* in such case the receipt or receipts of the said [M. B.] alone shall from time to time be a good and sufficient discharge or discharges to the said trustees or trustee for the time being, for so much of the respective shares of them the said [C.], [J.], and [M.] as in every such receipt shall be expressed or acknowledged to be received; *And* from and after all such payments as aforesaid, then do and shall stand and be possessed of and interested in all and every the rest, residue, and remainder of the said fees, profits, emoluments, and salaries (if any), over and above so much thereof as shall be necessary for all or any of the purposes aforesaid, and for making such provision (not exceeding the clear annual sum of pounds) for the said [M. B.] and her children by the said [*settlor*] as aforesaid, *Upon trust* to pay and apply the same, as far as the same will extend, in paying, satisfying, and discharging the said debt of pounds, so due and owing to the said [*creditors*], and the interest thereof as aforesaid, or so much and such part or parts of the said sum of pounds as shall from time to time remain due and unpaid; *And*, without waiting for the discharge thereof by the said yearly instalments as aforesaid, and from and after the full payment, satisfaction, and discharge thereof, and of every part thereof, then do and shall, by, with, and out of such residuary fees, profits, emoluments, and salaries, over and above what shall be necessary for all or any of the purposes aforesaid, and when and as such surplus monies shall amount to a competent sum for that purpose, effect such further assurance or assurances on the life of the said [*settlor*], as they the said trustees or trustee for the time being shall in their or his own discretion think fit, so as the monies to be so assured do not altogether exceed the sum of pounds of lawful money of Great Britain and Ireland, over and above the before-mentioned

OF FEES OF OFFICES.

and reside with wife, trustees may pay their shares to wife for benefit of daughters;

and in such case receipts of wife shall be good discharges;

and stand possessed of any residue, Upon trust to pay creditors their debts;

and after payment of all their debts, effect a further assurance on the life of the settlor, as the trustees shall think fit;

OF FEES OF OFFICES.

and pay the premiums due thereupon,

insurances of pounds and pounds; *And* do and shall, yearly and every year during the life of the said [*settlor*], and after such further assurance or assurances shall have been made as last aforesaid, by, with, and out of such residuary fees, profits and emoluments, and salaries, or any of them, from time to time pay and discharge all and every the annual premiums and other monies which shall or may from time to time be payable or necessary for the purpose of keeping on foot such last-mentioned assurance or assurances; *And* do and shall pay, apply, and dispose of all the rest, residue, and remainder of the said fees, profits, emoluments and salaries, over and above so much and such part and parts thereof as shall be necessary for all or any of the purposes aforesaid, in such and the same manner, and to and for such and the same ends, intents, and purposes, for the benefit of such and the same persons, and in such and the same shares and proportions in every respect, as is and are hereinbefore mentioned, expressed, and declared of and concerning the residue of the said fees, emoluments, and salaries hereinbefore provided for the benefit of the said [M. B.] and her children by the said [*settlor*] as aforesaid, one-eighth part of all such residue and remainder as aforesaid being retained, applied, or accumulated, with such consent as aforesaid, and to and for no other trust, intent, or purpose whatsoever. (*Trustee clauses, as in* Vol. VII, p. 511, 512). IN WITNESS, &c.

and pay all the residue upon the trusts after declared of the whole residue.

FOR THE BENEFIT OF A RELATION.

SETTLEMENT *of* MONIES *secured by Promissory Notes on a Relation, the Settlor being about to leave the Country, the Monies being vested in a Trustee, to be applied, at his discretion, for the Personal Comfort of the Relation; Power to invest so much as shall not be required for the Purposes of the Trust.*

THIS INDENTURE, made the day of , BETWEEN [E. W. K.] of, &c. of the first part; [*trustee*] of, &c. of the second part; and [G. P. K.] of, &c. of the third part: WHEREAS [J. K.] of, &c. being indebted to the said [E. W. K.] in the sum of pounds, hath this day, at the request of the said [E. W. K.], given unto the said [E. W. K.] five several promissory notes of him the said [J. K.], bearing even date with these presents, for securing the payment to him or his order of five several sums of pounds, pounds, pounds, pounds, and pounds, with interest for the same respectively, after the rate of five pounds for one hundred pounds, by the year, at the times hereinafter mentioned, (that is to say); one of the said sums of pounds at three months after date, &c. AND WHEREAS the said [E. W. K.] is about to leave England for the East Indies, and being desirous, previously to his departure, of making some provision for the more comfortable support of his brother (*a*) [G. P. K.], who is at present in delicate health, hath agreed to indorse and deliver over to the said [*trustee*], the said several promissory notes hereinbefore mentioned, and to join with

Parties.

That G. K. being indebted to E. W. K. has given five promisory notes for securing the debt.

That E. W. K. is about to leave England, and is desirous of providing for the support of his brother, and agreement to deliver over the notes to trustee,

(*a*) This settlement is well adapted for effecting a provision for an illegitimate child.

Illegitimate child.

FOR THE BENEFIT OF A RELATION.

that the notes have been endorsed accordingly.

her in such declaration of the trusts of the monies secured by the same notes as is hereinafter contained; AND WHEREAS in pursuance and part performance of the said agreement, the said [E. W. K.] hath this day indorsed and delivered over to the said [*trustee*], the said several promissory notes hereinbefore mentioned, as the said [*trustee*] doth hereby admit and acknowledge: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, it is hereby agreed and declared between and by the parties hereto, that the said [*trustee*], his executors and administrators, shall and will stand and be possessed of and interested in the said several sums of pounds, pounds, pounds, pounds, and pounds, so respectively secured by the several hereinbefore mentioned promissory notes as aforesaid, and the interest thereof, upon the trusts following, (that is to say); *Upon trust* that the said [*trustee*], his executors and administrators, do and shall receive and take, or enforce payment of the said sums and interest, as the same respectively shall become due, and do and shall apply the same, in such proportions, at such times, and in such manner, for the personal comfort, maintenance, and support of the said [G. P. K.], as he or they, in his or their own discretion, shall think fit and advisable; *And* do and shall, after the decease of the said [G. P. K.], pay so much of the said sums and interest as shall not be applied under the discretionary trust hereinbefore contained, (if any,) unto the said [E. W. K.], his executors, administrators, and assigns, or as he or they shall order or direct; *And* the said [E. W. K.] doth hereby expressly declare, that the said [G. P. K.] shall not by virtue of these presents, have any alienable right or interest in the said several sums and interest hereinbefore mentioned, any rule of law or equity to the contrary in anywise notwithstanding; *And* that the application of the same sums and interest, shall be entirely and solely in the discretion of the said [*trustee*] during her life, and after her decease, of such person or persons as shall for the time being be her executor or administrator, or executors or administrators; *And* the said [E. W. K.] doth hereby declare, that the receipt or receipts of the said [G. P. K.] for any sum or

Testatum, whereby it is agreed that trustee shall stand possessed thereof, upon trust to enforce payment thereof, and apply the same for the personal comfort of G. P. K., and after his decease pay the residue to E. W. K.

Proviso that G. P. K. shall have no power to alien sums, and that the application of the sum shall be at the disposal of trustee;

the receipts of G. P. K. to be sufficient dis-

FOR THE BENEFIT OF A RELATION.

sums of money which shall be paid to him by the said [*trustee*], her executors or administrators, for his benefit, under the trusts hereinbefore declared; and the receipt or receipts of any other persons to whom any money shall be paid by the said [*trustee*], her executors or administrators, for the benefit or on the account of the said [G. P. K.], shall effectually discharge the said [*trustee*], her executors and administrators, from the sum or sums therein mentioned or acknowledged to be received, and shall be considered a sufficient voucher or sufficient vouchers for the payment of the same sum or sums: *And* it is hereby lastly agreed and declared between and by the parties hereto, that it shall be lawful for the said [*trustee*], her executors and administrators, to lay out and invest so much of the said trust monies as shall not for the time being be wanted for the purpose aforesaid, in her or their names, in any of the public stocks or funds in Great Britain, as she or they shall think fit; *And* from time to time to alter and vary the stocks, funds, and securities in or upon which the same monies shall or may be invested, for or into other stocks, funds, and securities of the like nature, or as occasion shall require; *And* that the said [*trustee*], her executors and administrators, shall not be answerable for any loss that may arise by reason of any such investment as aforesaid, or for the acts or defaults of any broker, attorney, or other person acting for or under them, or for any other involuntary loss whatsoever; *And* that it shall be lawful for her or them to deduct out of the said trust monies all her or their expenses in executing the said trusts. IN WITNESS, &c.

charges, as well as receipts of any other person to whom money shall be paid on his account.

Power to trustee to invest so much money as shall not be wanted for the purposes of the trusts,

and vary the securities.

Provision for indemnity and reimbursement of trustee.

BY HUSBAND ON HIS WIFE.

SETTLEMENT *of Leaseholds by a Husband on his Wife, in order to enable her to carry on a Trade, with Power to sell the same if she shall see fit.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*husband*] of, &c. of the first part; [*wife*] of the same place, the wife of the said [*husband*], of the second part; and [*trustees*] of, &c. of the third part;

Recital of lease, and that it was taken to establish the wife in business;

WHEREAS (*recite lease for nineteen years from to* [*husband*] *of shop and cellar, see* 1 Byth. 275); AND WHEREAS the said hereinbefore recited lease was taken by the said [*husband*] with a view of establishing the said [*wife*], his wife, in the trade or business of a baker, upon her own sole and separate account, and for her own sole (*a*)

and that he has agreed to make it over to trustees, upon trusts hereinafter mentioned.

and separate use and benefit; and he hath accordingly, for the purposes aforesaid, and in consideration of the natural love and affection which he hath for the said [*wife*], agreed to assign and make over the said lease, and the said shop and cellar, and premises therein comprised and thereby demised as aforesaid, and their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts, and subject to the powers and

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What property a wife may take from her husband.

(*a*) It should be observed, that this assignment was made under the custom of London, but independent of a custom. Although a wife cannot take property directly from her husband, she may take it through the medium of a trustee. So also a husband may allow his wife to dispose and make profit of butter, eggs, or other similar articles, arising from his farm; and her savings therein will be held to be her separate property. *Slanning* v. *Style*, 3 P. W. 337. So also a wife's savings in her house-keeping will be held to be her own. *Mangey* v. *Hungerford*, 2 Eq. Ca. Ab. 156, marg.; and she may dispose of them either in her life-time or by will. *Sir Paul Neal's case*, Prec. Ch. 297. See also 1 Vern. 244. 2 Vern. 535. *Gold* v. *Rutland*, 1 Eq. Ca. Ab. 346, pl. 18. *Fettiplace* v. *Gorges*, 1 Ves. jun. 46. 3 B. C. C. 8; and *Cecil* v. *Juxon*, 1 Atk. 278.

provisoes hereinafter declared and contained of and concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and for the purposes aforesaid, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland by the said [*trustees*] to the said [*husband*] paid, at or immediately before the sealing and delivery of these presents (the receipt, &c.), HE the said [*husband*] *Hath* granted, bargained, sold, assigned, and set over, and by these presents *Doth* grant, bargain, sell, assign, and set over, unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT and those the said shop, cellar, and premises hereinbefore described and comprised in and demised by the said hereinbefore recited indenture of lease as aforesaid, with their appurtenances, TO HAVE AND TO HOLD the said shop and cellar, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of nineteen years created therein by the said hereinbefore recited indenture, and subject to the rents, covenants, conditions, and agreements in and by the same indenture respectively reserved and contained, on the tenant's or lessee's part to be paid, observed, and performed; *But nevertheless* upon the trusts, and in the manner following, (that is to say); *Upon trust* that they the said [*trustees*], and the survivor of them, or the executors or administrators of such survivor, do and shall permit and suffer the said [*wife*] to have the use and occupation and enjoyment of the said shop, cellar and premises hereby assigned, or intended so to be, for her own sole and separate use and benefit, exclusively and independently of the said [*husband*], or any person or persons with whom she may intermarry at any time after his decease, she the said [*wife*] paying and performing the rents and covenants in and by the hereinbefore recited indenture of lease respectively reserved and contained as aforesaid, as and when the same respectively ought to be paid and performed; *And* do and shall, in case the said [*wife*] shall so think fit, and so order or direct, let and

BY HUSBAND ON HIS WIFE.

Testatum, whereby gentleman assigns to trustees

parcels.

Habendum for the residue of the term therein,

upon trust to permit wife to occupy the same for her separate use,

she paying the rent and performing the covenants,

and let the premises when

BY HUSBAND ON HIS WIFE.

wife shall think fit,

and receive the rents thereof,

and apply the same as wife shall direct;

and in default of any direction, to wife herself;

her receipts to be sufficient discharges;

and after her decease, the premises to remain upon such trusts as wife shall direct;

and in default of such direction, in trust for husband.

Power to trustees, during the life of the wife, with her con-

demise the said shop, cellar, and premises hereby assigned, or intended so to be, or any part thereof, unto any person or persons, for any term or number of years, at such rent or rents, and under and subject to such conditions and agreements, as the said [*wife*] shall think proper or approve; *And* do and shall receive and take the rents and profits of the said premises which shall be so let or demised as aforesaid, as the same shall become payable; *And* do and shall apply the same, after deducting thereout any sum or sums of money which they or he shall pay, or be liable to pay, in respect of the rent and covenants reserved and contained in the said hereinbefore recited indenture as aforesaid, to such person and persons only, and to such intents and purposes only, as the said [*wife*], notwithstanding her present or any future coverture, shall by any writing under her hand direct or appoint; but not so as to deprive herself of the benefit thereof by sale, mortgage, charge, or otherwise by way of anticipation; *And* in default of such direction or appointment, into the proper hands of her the said [*wife*], for her own sole and separate use and benefit, and upon her receipt alone, which receipt shall be a sufficient discharge for the monies therein mentioned to be received; *And* after the decease of the said [*wife*], in case she shall depart this life during the continuance of the said term of nineteen years hereinbefore mentioned, the said shop, cellar, and premises hereby assigned, or intended so to be, and their appurtenances, shall remain and be upon such trusts, and be held and enjoyed in such manner as the said [*wife*], notwithstanding her present or any future coverture, by any deed or writing, to be by her sealed and delivered in the presence of two or more credible witnesses, or by her last will and testament, or any writing in the nature of a will, to be by her signed and published in the presence of and attested by the like number of witnesses, shall direct or appoint; *And* in default of and until such direction or appointment, and so far as any such direction or appointment shall not extend, *In trust* for the said [*husband*], his executors, administrators, or assigns: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that it shall and may be lawful to and for the said

[*trustees*], or the survivor of them, or the executors or administrators of such survivor, at any time during the life of the said [*wife*], with her consent or by her direction, absolutely to sell and dispose of the said shop and cellar hereby assigned, or intended so to be, either by public auction or private contract, as they or he shall think fit, and for such price or prices as to them or him shall seem reasonable, with liberty for them or him to buy in the same at any auction, and to resell the same at any future auction, or by private contract, as they or he shall think proper, without being answerable for any loss that may arise by reason of such resale; and for the purpose aforesaid, to enter into, make, and execute all such contracts, agreements, assignments, acts, deeds, matters and things, as to them and him shall seem reasonable and proper; *And* it is hereby agreed and declared between and by the said parties hereto, that in case the said shop, cellar and premises, hereby assigned, or intended so to be, shall be sold and disposed of as aforesaid, the said [*trustees*], or the survivor of them, and the executors and administrators of such survivor, shall, with and out of the monies which shall arise from such sale or sales, in the first place, retain and satisfy all the costs, charges, and expenses which shall have been incurred or sustained in or about the same sale or sales, or in perfecting or completing the same, and shall lay out and invest the residue of the said monies in their or his names or name in the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales; *And* shall and may alter and vary the said stocks, funds, and securities, into other stocks, funds, and securities, of the like nature, as occasion shall require, so that such laying out and investment, and every such alteration and variation as aforesaid, be made with the privity and approbation of the said [*wife*], during her life. (*Declaration that the said trust monies, &c. so to be invested, shall be held upon the same trusts as are before declared of the premises hereby assigned, or as near thereto as circumstances will admit. See ante,* 126. *Trustee clauses, as ante,* Vol. VII. p. 511, 512. *Covenants for title, as ante, p.* 53, 54.) IN WITNESS, &c.

BY HUSBAND ON HIS WIFE.

sent, to sell the premises,

and out of the monies arising from the sale, satisfy expenses,

and invest the residue, and vary the securities.

FOR KEPT MISTRESS.

SETTLEMENT, *whereby the Trusts of a Sum of Stock are declared to be in Favour of a* KEPT MISTRESS, *for her Life, and after her Decease, in Trust for certain Natural Children of the Settlor; and if they shall not attain Twenty-one, in Trust for the Settlor.*

THIS INDENTURE, made the day of ,

Parties.

BETWEEN [*settlor*] of, &c. of the first part; [*lady*] of, &c. of the second part; and [*trustee*] of, &c. of the third part:

That settlor is possessed of the sum of —*l.*;

WHEREAS the said [*settlor*] is possessed of or entitled to the sum of pounds three per cent. consolidated bank annuities, and the same is now standing in his name in the books of the governor and company of the bank of England;

that lady has lived with settlor;

AND WHEREAS the said [*lady*] has for some time passed lived and resided with the said [*settlor*];

agreement that all intercourse shall cease;

AND WHEREAS it hath been mutually agreed, that all intercourse between them the said [*settlor*] and the said [*lady*] shall cease;

and agreement to assign the sum of —*l.* to trustee;

And the said [*settlor*] hath, at the request of the said [*lady*], agreed to transfer the said sum of pounds three per cent. consolidated bank annuities, into the name of the said [*trustee*], upon the trusts, and for the intents and purposes hereinafter mentioned;

transfer accordingly.

And the said [*settlor*] hath accordingly transferred the said sum of pounds three per cent. consolidated bank annuities, into the name of the said [*trustee*], as he the said [*trustee*] doth hereby admit and acknowledge:

Testatum, whereby it is agreed that trustee shall stand possessed of the sum,

NOW THIS INDENTURE WITNESSETH, that in consideration of the said agreement, it is hereby agreed and declared that the said [*trustee*] shall stand possessed of and interested in the said sum of pounds three per cent. consolidated bank annuities, upon the trusts, for the intents and purposes, and under and subject to the powers, agreements, and declarations hereinafter expressed and declared, (that is to say); *Upon trust* that he the said

FOR KEPT MISTRESS.

[*trustee*], his executors, administrators, or assigns, do and shall either continue the same in its present state of investment, or call in, lay out, and invest the same in the name of the said [*trustee*], his executors, administrators, or assigns, in the purchase of a competent share or competent shares, in some of the other parliamentary stocks or public funds of Great Britain, or at interest upon real or government securities in England or Wales; *And* do and shall, from time to time, alter, vary, and transpose the same stocks, funds, and securities, for or into other stocks, funds, and securities of a like nature, when or so often as he or they shall think fit; *And* do and shall stand possessed of the said trust monies, stocks, funds, and securities, *Upon trust* that he the said [*trustee*], his executors, administrators, or assigns, do and shall (*until lady shall assign them, pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, to the lady, but if she shall attempt to assign them, then to appropriate them for her support; see ante, p.* 102, 103); *And* from and after the decease of the said [*lady*], the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, shall remain and be in trust for [Edward B.] of, &c. [Catharine B.] of, &c. and [Eliza B.] of, &c. (*describe the names and residences of the children particularly*), the reputed (*a*) children of the said [*settlor*] by the said [*lady*], and to be divided between or amongst them in equal shares and proportions, as and when they shall respectively attain their respective ages of twenty-one years, if the same shall respectively happen after the decease of the said [*lady*]; but if the same shall happen in the life-time of the said [*lady*], then immediately after her decease: PROVIDED

upon trust to continue the same on its present investment, or invest it in some other fund,

and vary the securities,

and stand possessed thereof upon trust to pay dividends to lady until she shall assign them,

and then to support the lady thereout, and after her decease,

In trust for the children of the settlor by lady.

Proviso for the survivorship,

(*a*) In gifts to natural children, their names and residences should always be particularly described. However, if the children have obtained a certain name, this is not necessary. See *Rivers' case*, 1 Atk. 410. It is the generally received opinion, that no certain provision can be made for an unborn natural child. *Blodwell* v. *Edwards*, Cro. Eliz. 510. Co. Lit. 36 b. But a gift to a child, of which a certain woman is pregnant, is valid. *Gordon* v. *Gordon*, 1 Meriv. 141.

Rules as to gifts to illegitimate children.

FOR KEPT MISTRESS.

and accruer of shares.

ALWAYS, that if any or either of them the said [*children*], shall depart this life before the share hereby intended for him, her, or them respectively, shall become vested as aforesaid, then, as well the share hereby intended for every such child so dying, as the share or shares which, by virtue of this present clause, shall have survived or accrued to him, her, or them respectively, shall, from time to time, go, accrue, and belong to the survivors or survivor, and others and other of them the said [*children*], and so far as circumstances will admit, shall vest in and be paid to him, her, or them, and, if more than one, in equal shares, at such time or times, and in such manner as is hereinbefore expressed and declared of and concerning his, her, or their original share or shares of and in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof; (*Clauses for maintenance, accumulation, and advancement, as ante*, Vol. VII, *p.* 508, 509;)

Agreement that if all the children shall die before trust-monies shall vest, the same shall be in trust for settlor absolutely.

AND it is hereby declared and agreed by and between the parties to these presents, that if all of them the said [*children*] shall depart this life before the shares hereby intended for them respectively shall become vested as aforesaid, *Then*, and in that case, the said [*trustee*], his executors, administrators, and assigns, do and shall, immediately after the decease of the said [*lady*], pay, transfer, or assign the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, unto the said [*settlor*], his executors, administrators, and assigns, for his and their own absolute use and benefit; (*Trustee clauses, as ante*, Vol. VII. p. 511, 512).

IN WITNESS, &c.

FOR KEPT MISTRESS.

BOND *conditioned for the Payment of an Annuity to a* KEPT MISTRESS.

KNOW ALL MEN by these presents, that I [*obligor*] of, &c. am held and firmly bound to [*obligee*] of, &c. in the sum of pounds of, &c. to be paid to the said [*obligee*], or his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents: SEALED with my seal. Dated, &c.

That obligor and lady have lived together.

WHEREAS [*lady*] has for some time past lived and resided with the above bound [*obligor*]; AND WHEREAS it hath been mutually agreed, that all further intercourse between them the said [*obligor*] and [*lady*] should cease; *And* the said [*obligor*] hath, at the request of the said [*lady*], agreed to secure to the said [*obligee*], for the use of the said [*lady*], and as a provision for her future support, an annuity or clear yearly sum of pounds, for and during the term of her natural life, and to be paid and payable in the manner hereinafter mentioned: NOW THE CONDITION of the above written bond or obligation is such, that if the above bounden [*obligor*] shall and do well and truly pay, or cause to be paid unto the above named [*obligee*], one clear annuity or yearly sum of pounds of, &c. by four equal quarterly payments, on the day of , the day of , the day of , and the day of , in every year, until the decease of the said [*lady*], or until the said [*lady*] shall assign, charge, or otherwise dispose of the same annuity or yearly sum, or any part thereof, by way of anticipation, or attempt or agree so to do, or shall do

Agreement that all intercourse should cease, and to secure annuity for the purposes hereinafter mentioned.

Condition that if gentleman shall pay an annuity of —*l.* to obligee until lady shall attempt to assign it,

FOR KEPT MISTRESS.

any act whereby the said annuity or yearly sum, if payable to herself, would become vested in any other person or persons; or until the said [*lady*] shall, by letter or otherwise, molest or annoy the said [*obligor*], or make some claim or demand against or upon him, (which ever event shall first happen); *And* if the said [*obligor*] shall and do make the first quarterly payment of the said annuity or yearly sum of pounds, on the day of next ensuing the date of the above written bond or obligation, *Then*, and in such case, the above written bond or obligation shall be void: *And it is hereby expressly declared*, that the said [*obligee*] do and shall stand possessed of the said annuity or yearly sum of pounds, *Upon trust* to pay the same as and when the same shall be received by the said [*obligee*] as aforesaid, to the said [*lady*], to and for her absolute use and benefit, for and during the term of her natural life; *And* that in case the said [*lady*] shall happen to marry while the said annuity or yearly sum hereby secured shall continue payable, the same shall after her marriage be for her sole and separate use and benefit, exclusively of her husband, and without being in anywise subject to his debts, control, interference, or engagements; *And* that the receipt or receipts in writing of the said [*lady*] shall, notwithstanding her coverture, be alone a sufficient discharge for the same annuity or yearly sum, or such part thereof as shall be therein mentioned and acknowledged to be received.

or until lady shall molest obligor.

bond to be void.

Agreement that obligee shall stand possessed of annuity,

upon trust to pay annuity to lady for her life,

and if lady shall marry, for her separate use;

her receipts to be sufficient discharges.

Condition *of a* Bond *for providing for a* Kept Mistress.

FOR A KEPT MISTRESS.

THE CONDITION of the above-written obligation is, that if the above-bounden [*obligor*], his executors or administrators, do and shall, during such time as [*lady*] of, &c. spinster, shall continue single and unmarried, well and truly pay or cause to be paid to the said [*trustee's obligees*], their executors, administrators, and assigns, one annual sum of pounds, of, &c. clear of all deductions and abatements whatsoever for present or future taxes, or any other cause, matter, or thing whatsoever, by four even or equal quarterly payments in every year; *And* the first quarterly payment thereof to be made at the expiration of three calendar months next after the date of the above-written bond or obligation; *And* in case the said [*lady*] shall depart this life on any other day than one of the quarterly days of payment, a proportional part of the said annual sum to be paid for so many days as the said [*lady*] shall live of the then current quarter of a year; *Then* and in that case the above-written bond or obligation shall be absolutely void, *But* otherwise the same shall remain in full force and virtue. And *it is hereby agreed and declared* between and by the said [*obligor*], [*lady*], and [*trustees*], that the said [*trustees*], and the survivor of them, his executors, administrators, and assigns, shall stand and be possessed of and interested in the said annual sum of pounds, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter contained (that is to say); *Upon trust* that they the said [*trustees*], and the survivor of them, his executors and administrators, until the said [*lady*] shall assign, charge, or otherwise dispose of the said annual sum of

Condition that if obligor shall pay to lady an annuity of —*l.*

the first quarterly payment to be made on the day of , and a proportional part thereof;

then the bond to be void.

Agreement that trustees shall stand possessed of annuity,

upon trust until lady shall assign the same,

FOR A KEPT MISTRESS.

pounds, or any part thereof, in the way of anticipation, *Do and shall* pay the said annual sum of pounds, as the same shall become due and payable, into the proper hands of her the said lady; *But* if the said [*lady*] shall assign, charge, or dispose of the said annual sum of pounds, or any part thereof, in the way of anticipation, *Then* and from thenceforth, *Do and shall* pay and apply the said annual sum of pounds for the maintenance and support of the said [*lady*], and in providing her with the necessaries or conveniences of life, in such manner as the said [*trustees*], or the survivor of them, his executors and administrators, shall think proper (*a*).

to pay the annuity to lady;

but if she shall assign the annuity,

then to apply the same for the maintenance of lady.

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

FAMILY SETTLEMENT, *whereby Settlor assigns Leaseholds, Stock in Trade, and Personal Estate, Upon trust, in the first place, to pay Expenses of executing Trusts; in the next place, to pay Debts of Settlor; and then Upon trust to invest the Residue, and pay Rents, Interest, and Dividends to Wife for her Life, and after her Decease, In trust for the Children of the Settlor, in equal Shares; with a* POWER *of* REVOCATION *and* NEW APPOINTMENT *to the Settlor*—(being a Settlement intended to evade the Payment of Probate and Legacy Duty).

Parties.

THIS INDENTURE (*b*), made, &c. BETWEEN (*settlor*] of, &c. of the one part, and [A. B.] of, &c. of the

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(*a*) If the bond is given to the woman herself, see the proper form, Vol. VII, p. 242; and as to the validity of bonds of this nature, see 3 Byth. 329, Stewart's edition.

(*b*) Voluntary settlements have been accidentally touched upon in a former page (See Vol. VII, p. 322); and for a general view of this

other part; WHEREAS the said [*settlor*] is now possessed of or entitled unto certain messuages or dwelling-houses and premises, with the appurtenances thereunto belonging, situate at in the county of , for and during the residue of a term of years, created by an indenture bearing date on or about the day of , and made between [*lessor*] of the one

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

Possession of leaseholds,

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subject, the reader is referred to the present Solicitor-General's admirable work on Vendors. Two or three late cases on the subject may here, however, be noticed with propriety. A voluntary settlement will not be revoked by a subsequent settlement for valuable consideration, except so far as they are inconsistent with each other. Thus, where by a voluntary settlement in 1731, a father conveyed leaseholds to trustees, upon trust for himself for life, with remainder to his eldest son, his executors, administrators, and assigns; and if such eldest son should die before twenty-one, to his second son, &c. In 1739, the father, in consideration of the marriage of his eldest son, and of his wife's portion of 1000*l.*, made a different settlement of the same lands, giving an estate to the son for life, with reversion to the father. The marriage took effect: the son settled these lands upon a daughter of the marriage, and the father by his will in 1749 devised all his estate in the lands to his daughters. The question was, whether the reversionary interest reserved by the father in the settlement of 1739 went to his devisees, or to the daughter of the son, claiming under her father, by force of the voluntary deed of 1731. A bill was filed against the daughter by the devisees of the father, which was dismissed without costs. From this decree the plaintiffs appealed to the House of Lords. The Lord Chancellor said, there is evidence here that the father himself considered the former deed as subsisting after the execution of the latter; and, on the whole, I am of opinion that the decree of the court below is right. *Croker* v. *Marten*, 1 Dow, N. S. 15. 1 Bli. N. S. 573.

Where a voluntary settlement will not be revoked by a settlement for a valuable consideration.

It has been lately decided, that articles executed in contemplation of a future separation of husband and wife, are invalid, as being against the policy of the marriage laws. *Hindley* v. *Marquis of Westmeath*, 6 B. & C. 200; and see *Durant* v. *Titley*, 7 Pri. 577. But where the future separation was, by the express words of the deed, confined to reasonable or justifiable cause, it seems that such a deed will be supported. Thus, where by indenture dated the 27th September 1825, and made between A. of the one part, and B. of the other, and reciting that a marriage had long subsisted between them, it was witnessed, that in consideration of B.'s covenant thereinafter mentioned, A. covenanted

Where a deed which contemplates a future separation will be valid.

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

part, and [*settlor*], of the other part, under the yearly rent, and subject to the covenants and agreements in the same indenture reserved and contained, on the tenant's or lessee's part to be paid and performed; AND WHEREAS the said [*settlor*] has for some time carried on the trade or business of a at ; AND WHEREAS the said [*settlor*] is also possessed of or entitled to the goods, chattels, debts,

and also goods and chattels.

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with B. to secure to his wife an annuity of 50*l.* during her life; and further, that if she should at any time thereafter withdraw herself from her husband by reason of his future infidelity, or any other reasonable or justifiable cause, then that he would, during such separation, pay her an annuity of 50*l.* in lieu of alimony, and would not proceed against her for living separately, nor against B. or any other person for receiving, maintaining, or protecting her during such separation. And in consideration of the covenants therein contained, B. covenanted to pay his daughter an annuity of 50*l.* during her life, for her separate use, and further, that he would indemnify her husband against the debts which she might incur whilst living separate, during such time as the annuity covenanted to be paid by A. during such separation, should be paid. And it was provided, that if any part of the annuity covenanted to be paid by B. should be in arrear for twelve months, A. should be released from his agreement. B. became a bankrupt before any payment of his annuity of 50*l.*, of which half a year was then in arrear. It was objected, that the deed was void; 1st, as against the policy of the marriage laws, being a stipulation for a future separation; 2nd, As a fraud upon the creditors of B., as an assignment of property on the eve of bankruptcy, without a sufficient consideration; and Sir *A. Hart*, V. C., held the agreement not against the policy of the marriage laws, but doubted whether it was not a fraud upon the creditors. But on its afterwards coming before the present Vice Chancellor (Sir *L. Shadwell*) he thought that the husband's covenant to pay the wife an annuity was a sufficient consideration to support the settlement; and that it was unnecessary to consider its validity or invalidity with respect to the laws of marriage. *Ex parte Draycott*, 2 Gl. & Jam. 283.

Where a gift to a guardian, &c. will be supported.

It will be necessary that those who stand in a confidential situation with regard to others, as guardian, physician, or legal adviser, should shew that any gift to them proceeded from the free will of the donor; nevertheless a gift that a person of nice and honourable feeling would not accept, will not be considered invalid in equity, unless it be tainted by fraud. Thus where the plaintiff was more than eighty years old, and had been constantly attended by the defendant as his

credits, stock in trade, and other personal estate hereinafter mentioned, to a considerable amount or value; AND WHEREAS the said [*settlor*] is desirous of retiring from his said trade or business, and of making a provision, as well for the payment of his debts, as for [M.] his present wife, and their children, and hath for these purposes agreed to transfer, assign, and make over unto the said [A. B.], his executors, administrators and assigns, all and singular the aforesaid leasehold estates, and also all his stock and effects in his said trade or business, chattels, debts, stock in trade, effects and personal estate, (and which are mentioned and described in the schedule (*b*) hereunder written or hereunto

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

Desire to retire, and pay debts, and provide for family, and agreement to assign leaseholds, stock in trade, and personalty, for these purposes.

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surgeon, who was in the habit of receiving the dividends for his sister, and wishing to save the legacy and probate duty, resolved to evade them, by disposing of his fortune in his life-time; and the defendant called on plaintiff's solicitor with instructions to prepare the deeds, by which, after plaintiff's decease, certain portions of stock were declared to be in trust for different persons, and the residue in trust for the defendant. A bill was filed by the plaintiff to set aside the deed, on the ground of his age and ignorance, and the undue influence of the defendant. But as it appeared that blanks were left in the engrossment of the deed for the names of the persons who were to take the residue, and that when the solicitor attended the plaintiff for execution, the plaintiff desired him to fill them up with defendant's name; that the solicitor explained the nature of the deed to him, and the difference between it and a will, the one being irrevocable and the other not; the Vice Chancellor ordered the bill to be dismissed with costs, observing, that in the present case the defendant did not appear to be the confidential adviser of the plaintiff, nor to have any other influence with him than *naturally followed* from his long attendance upon him as surgeon, and that the evidence of the solicitor who drew the deed has established the intervention of a third person, and the free will of the grantor. *Pratt* v. *Barker*, 1 Sim. 1. And see further on this, *Bridgman* v. *Green*, 2 Ves. 627. *Griffiths* v. *Robins*, 3 Madd. 192.

(*b*) In assignments of chattels, and more particularly of stock in trade, a schedule should always be employed. Where a settlement was made by a woman (engaged in trade) previous to her marriage, whereby she assigned to a trustee, for her separate use, "all and singular the several articles of household furniture, plate, linen, china, goods, chattels, and effects, particularly specified and enumerated in a schedule indorsed on a deed, and also the stock in trade, materials, and

Where schedule should be employed.

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

annexed, *Upon* and for the trusts, intents, and purposes, and subject to the powers, provisoes, declarations, and agreements hereinafter expressed and declared of and concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and for making a provision for payment of the just debts by him the said [*settlor*] due and owing, and in consideration of the natural love and affection which he the said [*settlor*] hath and beareth for and towards the said [M.] his wife, and their said children, and also in consideration (*nominal consideration and receipt, as* ante, p. 171,) He the said [*settlor*] *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth*, &c. unto the said [A. B.], his executors, administrators, and assigns, ALL THAT (*leasehold property*) *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or dwelling-houses, and all and singular other the premises hereby assigned, or intended so to be, with their and every of their appurtenances, unto the said [A. B.], his executors, administrators, and assigns, henceforth for and during the residue of the said term of years; *But* nevertheless upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements hereinafter expressed and declared of and concerning the same (*c*). AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance and performance of the said agreement, and for the considerations aforesaid, and also in consideration (*no-*

First testatum, whereby settlor assigns leaseholds,

Habendum to trustee, upon the trusts hereinafter mentioned.

Second testatum, whereby settlor assigns

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other articles belonging to the said M. A. in or about her said business," a doubt arose as to whether a horse and gig which was used by M. A. previously to and at the time of the execution of the deed, for the purposes of her trade, passed under the description of stock in trade. It was contended, that as these articles were not mentioned in the schedule, they could not pass. But the court of K. B. held, that although the articles in question were not peculiar to the business alluded to in this case, yet if kept *bonâ fide* for the purposes of the trade, and not for pleasure, they would pass under the words "stock in trade." *Dean* v. *Brown*, 6 B. & C. 336.

Two habendum

(*c*) In this precedent two witnessing parts are employed. The

minal consideration and receipt), HE the said [*settlor*], *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth*, &c. unto the said [A. B.] his executors, administrators, and assigns, ALL AND SINGULAR the stock, goods, and effects whatsoever of him the said [*settlor*] in his said trade or business, so by him carried on as aforesaid; *And* all and singular the wares, merchandizes, implements, utensils, and things whatsoever of him the said [*settlor*], belonging or appertaining to the said trade or business, and which are particularly mentioned or described in the schedule hereunder written, or hereunto annexed; *And* all and singular the sum and sums of money of or belonging to him the said [*settlor*], upon real or personal security; *And* all and singular other the debt and debts, sum and sums of money, due and owing to him the said [*settlor*] from any person or persons whomsoever, either in the course of the trade, or business by him heretofore carried on, or otherwise, *Together* with all securities for the same respectively,

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

stock in trade and personal estate.

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shorter and better mode, however, is to have one witnessing part by which both kinds of property are assigned, and two habendums, as follows:

"TO HAVE AND TO HOLD the said messuages or dwelling houses, and all and singular other the leasehold premises hereby assigned, or intended so to be, with the appurtenances, unto the said [A. B.], his executors, administrators, and assigns, for the residue of the said term of years now to come therein; *But* nevertheless upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same; *And* TO HAVE, HOLD, RECEIVE, AND TAKE the said stock in trade, securities, debts and sums of money, goods, chattels, personal estate, and all and singular other the premises hereby assigned, or intended so to be, unto the said [A. B.], his executors, administrators, and assigns, absolutely, *But* nevertheless upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same; *And* as, for, and concerning," &c. *as above.*

dums, when advisable in assignment of leaseholds and personalty.

And see Vol. VI. p. 493, and Vol. VII, p. 19, for other assignments of leaseholds and personalty.

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

And all the interest, dividends, and annual produce already due, and henceforth to grow due, for or in respect of the said securities, debts, monies, and premises, *Together* with full power and authority in the name or names, and at the expense of the said [*settlor*], his executors or administrators, to receive and give effectual discharges for the said stock in trade, goods, chattels, debts, credits, and other personal estate, and from time to time to commence, institute, and prosecute such actions, suits, and other lawful proceedings for the recovery of the same, as shall be deemed necessary or expedient; To HAVE, HOLD, RECEIVE, AND TAKE, all and singular the said stock in trade, securities, debts and sums of money, goods, chattels, personal estate, and all and singular other the premises hereby assigned, or intended so to be, unto the said [A. B.] his executors, administrators, and assigns, absolutely, *But* nevertheless upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same; *And* as for and concerning, as well the said messuages or dwelling houses and premises hereby assigned, or intended so to be, as the said stock in trade, securities, monies, debts, goods, chattels, and personal estate hereby assigned, or intended so to be, *It* is hereby agreed and declared between and by the said parties hereto, that he the said [A. B.], his executors, administrators, and assigns, shall henceforth stand possessed of and interested in the same respectively, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, and declarations hereinafter expressed concerning the same (that is to say); *Upon trust* that he the said [A. B.], his executors, administrators, and assigns, shall and do forthwith, as soon as conveniently may be, receive, recover, collect, and get in the several debts and sums of money hereby assigned, or intended so to be; *And upon further trust*, that he the said [A.B.], his executors, administrators, or assigns, do and shall, with and out of the monies to be received, collected, and got in as aforesaid, or by, with, and out of the rents and profits, interest, dividends, or annual produce of the said leasehold premises, securities, stock in trade, and personal estate, or a competent part or parts thereof, or by all and every or

Habendum to trustee, upon the trusts hereinafter declared.

Declaration, that the trustees shall stand possessed of all the premises,

upon trust to get in the debts and monies,

and out of the proceeds thereof

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

any of the aforesaid means, in the first place, pay all the costs, charges, and expenses of him the said [A. B.], his executors, administrators, and assigns, in and about the execution of the trusts hereby in him and them reposed; *And* in the next place, do and shall pay and satisfy all the debts and sums of money by him the said [*settlor*] owing, which shall be proved and verified to the satisfaction of the said [*trustee*], his executors, administrators, or assigns; *And* it is hereby agreed and declared, that the said [*trustee*], his executors, administrators, or assigns, shall have full power and authority to compromise or compound any of the said debt or debts, which are or shall be claimed to be due and owing from and to the said [*settlor*], and also to submit any dispute arising about the payment thereof to arbitration, in such manner as they or he shall think proper; *And upon further trust*, that the said [A. B.], his executors, administrators, and assigns, shall and do lay out and invest the surplus or residue (if any) of the said trust monies, after the several payments hereinbefore directed to be made as aforesaid, in his or their name or names, in the public stocks or funds of Great Britain, or upon government or real securities in England or Wales; *And* do and shall, from time to time, alter, vary, and transpose the same stocks, funds, and securities, as he or they shall think proper; *And upon this further trust*, that that he the said [A. B.], his executors, administrators, and assigns, do and shall stand possessed of and interested in the said leasehold premises, and the said trust-monies, stocks, funds, and securities, upon and for the trusts, intents, and purposes hereinafter expressed concerning the same, (that is to say); *Upon trust* that he the said [A. B.], his executors, administrators, and assigns, do and shall, from time to time, as the same shall become due and payable, pay and apply the yearly rents and profits, interest, dividends, and annual produce of all and singular the said trust premises, unto the said [*wife*], for and during her life; *And* from and after her decease, as to the said trust premises, and the rents and profits, interest, dividends, and annual produce thereof, *In trust* for all and every, or such one or more exclusively of the others or other of the children of the said [*settlor*] by the said [M.] his wife,

pay expenses of executing the trusts,

and then pay all debts due from settlor;

power to compound.

and invest the residue,

and vary the securities;

and stand possessed thereof,

upon trust to pay interest to wife for life;

and after her death, in trust for all the children of the said

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

with such provisions for their respective maintenance, education and advancement, and at such age, day, or time, and at such ages, days, or times, and in such parts, shares, and proportions, and charged with such annual sums of money and limitations over, for the benefit of the said children, or some or one of them, and upon such conditions, with such restrictions, and in such manner, as the said [M. B.] shall, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, from time to time, direct or appoint;

settlor, as wife shall appoint;

and in default of appointment, In trust for all the children, as tenants in common.

And in default of such direction or appointment, and so far as any such direction or appointment shall not extend, *In trust* for all and every the said children, or such of them as shall be living at the time of the decease of the [*settlor*], and to be divided between or amongst them in equal shares, as tenants in common, and to be paid and payable, if a son or sons, as and when he or they shall respectively attain their age of twenty-one years, and if a daughter or daughters, as and when they shall respectively attain that age, or marry under that age, which shall first happen. (*Provisions for hotch-pot, maintenance, and survivorship, as ante*, Vol. VII, p. 508, 509. *Trustee clauses, as ante*, Vol. VII, p. 511, 512.) PROVIDED ALWAYS (*d*), and it is hereby agreed and declared between and by the parties

Power of revo-

What voluntary settlement will be valid, which is intended to defeat the probate duty.

(*d*) It has always been considered, until lately, that a person might effectually defeat the probate and legacy duty by conveying his property to a trustee, upon such trusts as he should please, and might reserve to himself a life-estate and power of revocation. See Sugd. Pow. 225, n. 4th edit. This, however, has been decided otherwise in the late case of *The Attorney-General* v. *Jones and Bartlett*, 3 Pri. 368. The above precedent was drawn with the intention of evading the duty; and it was thought prudent to give no life interest to the husband, but to give the whole to the wife for her life, and a power of revocation to the settlor, which would in fact give him both the enjoyment and disposition of the property, and which would not be open to the rule laid down in *The Attorney General* v. *Jones*, the circumstances of which were as follow:

A person by an indenture, dated 25th of March, 1813, conveyed to

hereto, that it shall and may be lawful to and for the said [*settlor*] during his life, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by him sealed and delivered in the presence of and attested by two or more

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

cation to settlor.

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trustees certain leasehold premises, and monies in the funds, and all arrears of a pension due to him, and all his household furniture which might belong to him at the time of his decease, upon trust for the benefit of the settlor for life, and after his decease, upon trust for the maintenance and benefit of an illegitimate daughter; and in the indenture was contained a power of revocation by the settlor. On the 5th of April 1813, the settlor confirmed the deed by his will, and directed the payment of his debts, &c. The legacy duty was demanded on account of the property bequeathed to the illegitimate daughter. The settlor retained possession of the deed till his death, which happened in Nov. 1813. It was held, that both the instruments must be considered so as to be construed as testamentary instruments, and the property passing under them would pass as legacies, and be subject to duty accordingly. *Wood*, Baron, dissenting.

Attorney-General v. *Jones.*

That a deed, testamentary in its nature, will be admitted to probate by the Ecclesiastical Court, see *Thorold* v. *Thorold*, 1 Phill. 1.

Where a person by his will, dated Feb. 1824, gave to his wife a yearly rent-charge of 20*l.*, and bequeathed to the plaintiff 1500*l.* if he should attain twenty-one, and then gave all his real and personal property in trust for his two sons, T. B. Gaskell and the plaintiff, J. D. Gaskell, equally, and appointed T. B. Gaskell and the defendant Holbrook Gaskell executors. By a codicil, dated Sept. 1826, after noticing the death of T. B. Gaskell, the testator gave his share to the plaintiff. After the date of his will, the testator addressed a letter to his bankers, directing them to open a fresh account with himself, Holbrook Gaskell, Edward Gaskell, and William Gaskell, as trustees for his wife for her life; and after her death, as trustees for the plaintiff during his minority, and to transfer the sum of 1500*l.* from the testator's account to theirs; and the sum was accordingly transferred, and other sums were also transferred from time to time, by the direction of the settlor. The doubt, upon the death of the testator, was, whether the sums which had been thus appropriated by the testator, constituted part of his personal estate at his death. It appeared that Holbrook Gaskell first knew of these accounts from books of the testator found after his death; that none of the persons to whose names the sums were

Gasekell v. *Gaskell.*

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

credible witnesses, to revoke, determine, and make void the trusts, intents and purposes, powers, provisoes, agreements and declarations, hereinbefore expressed or declared, or any of them, or any part or parts thereof; *And* by the same or any other deed or deeds, instrument or instruments, so sealed and delivered, and attested as afore-

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transferred had ever exercised any act of ownership over the funds, or acted in any manner as trustees, but the bankers deposed that they would not have paid the money to the order of the testator, and did not consider the same under his controul. It appeared, however, that the testator entertained some doubt as to the effect of those appropriations, and, a very short time before his death, wrote a letter to his bankers, in which he states, that his solicitor had that morning informed him, that he should want the sum of 2800*l.*, which he was putting out on mortgage, 2000*l.* on account of money in the hands of trustees for Mrs. Elizabeth Gaskell, and the remaining 800*l.* in the hands of trustees for John Dakin Gaskell. Lord C. B. Alexander thought, that notwithstanding the transfer, this shewed that he considered he had a control over the funds. No notice appeared to have been given to the trustees; and it was evident that these transfers were made to evade the legacy duty. These transfers were not *donationes causâ mortis*, they were clearly gifts *inter vivos*. "I cannot," said his lordship, "consider them as binding appropriations. They were made with a *fraudulent intent*, and would not have bound the testator. What occasions the greatest difficulty is, the argument that the trustees could have sued the bankers. I do not feel myself bound to give any opinion on this part of the case; but the better opinion seems to me, that the testator might have revoked the order to the bankers; and that in such case the trustees could not have recovered from them. One of the strongest cases on this subject is *Wharton* v. *Walker*, 4 B. & C. 163. I do not mean to say that there are not cases in which a different view has been taken, but they have all been cases in which creditors have been interested. The trust for the wife was not for her separate use; and had not the testator a right to receive that which was not settled to her separate use? And if he could so receive it during his life, the transfer was clearly in effect a legacy to her after his death. If a man wholly denudes himself of property, and *places it in trustees over whom he has no control*, I will not say he may not do so in such manner as effectually to defeat the legacy duty. It is not, however, necessary for me to give any opinion on such a case, on the present occasion, for here I consider it to be clear, the testator had not parted with all control

said, to direct and appoint such new or other trusts, intents, purposes, powers, provisoes, agreements, and declarations, of and concerning the said premises, the trusts, intents, purposes, powers, provisoes, and declarations, concerning which shall be so revoked, determined, and made void, as to the said [*settlor*] shall seem meet. IN WITNESS, &c.

FOR PAYMENT OF DEBTS, AND FOR HIS FAMILY.

ASSIGNMENT OF TERM.

ASSIGNMENT *of a* TERM *to attend the* INHERITANCE, *according to the Uses and Trusts declared thereof by a Marriage Settlement.*

THIS INDENTURE, made the day of , BETWEEN [Z. Z.] of, &c. [*trustee assigning the term*], of the first part; [*settlor*] of, &c. of the second part; and Y. Y., of, &c. [*trustee to whom term is assigned*], of the third part; WHEREAS (*a*) by an indenture bearing date on or about the day of , and made or expressed to be made between [A. B.], therein described, of the one part, and [C. D.], therein described, of the other part; the pieces or parcels of land, hereditaments, and premises hereinafter described, and intended to be hereby

Parties.

Recital of indenture, whereby term was created;

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over the fund; the fund therefore must be considered as personal assets. *Gaskell* v. *Gaskell*, 2 Yo. & Jerv. 502.

If the late cases, therefore, are to be followed, it would seem that a settlement which gives the settlor the beneficial enjoyment of the property during his life, and the power of revoking it at any time, which would give him the full control over it, would be held to be invalid. This principle must however be received with caution, as it is certainly against the general practice and sentiments of the profession; and perhaps the first of these cases, on the question coming again before the courts, would be confined to its particular circumstances.

Strictures on these cases.

(*a*) As to the recitals necessary in an assignment of a term, see Vol. VII, p. 51.

ASSIGNMENT OF TERM.

assigned, with their appurtenances, were demised by the said [A. B.] unto the said [C. D.], his executors, administrators, and assigns, for the term of five hundred years from thence next ensuing, for certain purposes in the said indenture mentioned, and which have now long since been fully performed or otherwise satisfied; AND WHEREAS by divers mesne conveyances and assurances in the law, and ultimately by indentures of lease and release, bearing date respectively on or about the and days of , the release being made, or expressed to be made, between [M. M.] of the first part, [N. N.], of the second part, and [*settlor*] of the third part, the inheritance in fee-simple, in remainder or reversion, immediately expectant on the said term of five hundred years, of and in the said pieces or parcels of land, hereditaments, and premises hereinafter described, and intended to be hereby assigned, with their appurtenances, were, (for the considerations in the said indenture of release mentioned,) conveyed by the said [M. M.] and [N. N.] to the use of the said [*settlor*], his heirs and assigns for ever; AND WHEREAS, by divers mesne assignments, assurances, and other acts in the law, and particularly by an indenture bearing date on or about the day of , and made, or expressed to be made, between [B. B.], therein described, of the first part, the said [M. M.] of the second part, the said [N. N.] of the third part, the said [*settlor*], of the fourth part, and the said [Z. Z.], of the fifth part, the said pieces and parcels of land, hereditaments and premises hereinafter described, and intended to be hereby assigned, with their appurtenances, were (for the considerations in the said indenture now in recital mentioned,) assigned by the said [B. B.] to the said [Z. Z.] for the then residue and remainder of the said term of five hundred years, created therein as aforesaid, *In trust* for the said [*settlor*], his heirs and assigns, and to attend the inheritance; AND WHEREAS by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with these presents, and made, or expressed to be made, between the said [*settlor*] of the first part, [*lady*] therein described, of the second part, and [*trustees*] of the third part, the inheritance in fee-simple in remainder or rever-

that by divers mesne conveyances, and ultimately by indentures of, &c. the reversion of the premises was conveyed to the settlor;

that by divers mesne assignments, and by indenture of, &c. term was assigned to vendor's trustees.

Indentures whereby the reversion of the premises has been conveyed to uses.

sion, immediately expectant on the determination of the said term of five hundred years, of and in the said pieces or parcels of land, hereditaments, and premises hereinafter described, and intended to be hereby assigned, with their appurtenances, have (for the considerations in the said indenture of release mentioned) been conveyed by the said [*settlor*] to the said [*trustees*], to the uses, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, agreements, and declarations therein expressed and declared; AND WHEREAS it hath been agreed, that the said [Z. Z.] should assign the said pieces or parcels of land, hereditaments and premises, with the appurtenances, unto the said [Y. Y.], for the residue and remainder of the said term of years, upon the trusts, and in the manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [Y. Y.] to the said [Z. Z.] paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), HE the said [Z. Z.], (at the request and by the direction of the said [*settlor*], and testified by his being a party to and sealing and delivering these presents,) *Hath* bargained, sold, and assigned, and by these presents *Doth* bargain, sell, and assign unto the said [Y. Y], his executors, administrators and assigns, ALL, &c. (*parcels*), *Together* with, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said pieces or parcels of land, hereditaments, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [Y. Y.], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of five hundred years, created therein by the said hereinbefore recited indenture of the day of as aforesaid, upon and for the trusts, intents, and purposes, and under and subject to the powers, provisoes, agreements and declarations expressed and contained in the said hereinbefore recited indenture of even date with these presents, and to permit the same term to wait upon and attend the rever-

ASSIGNMENT OF TERM.

Agreement to assign the term to trustee.

Testatum, whereby term is assigned to trustee,

Habendum for the residue of the term,

In trust to attend inheritance.

ASSIGNMENT OF TERM.

sion, freehold, and inheritance of the said pieces or parcels of land, hereditaments, and premises hereby assigned, or intended so to be, with their appurtenances, and to protect the same from all mesne incumbrances, if any such there be; *And* the said [Z. Z.] *Doth* hereby for himself his executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [Y. Y.], that he the said [Z. Z.] hath not at any time heretofore made, done, omitted, committed, executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason whereof the said pieces or parcels of land, hereditaments and premises hereby assigned, or intended so to be, or any of them, or any part thereof, or the said hereinbefore mentioned term of years, created therein as aforesaid, are, is, can, shall, or may be impeached, charged, or incumbered. IN WITNESS, &c.

Covenant by trustee against incumbrances.

TRANSFERS.

To what instruments the term is applied.

The term Transfer is usually applied to an instrument by which any share in the stock and funds of a corporation or other public company is passed from one person to another,—or any mortgage, or similar security, is conveyed to another party. The *forms* used for transferring shares in a public company are usually prescribed by the act of parliament, or deed of settlement, establishing the company, and are generally printed, and very concise; and in many cases are merely signed by the party making the transfer,—as in the case of a transfer of stock at the Bank of England, or the India House, where sealing and delivery are not necessary. These forms are almost always prepared or filled up by some clerk of the Company; and it is advisable not to depart from the regular form further than circumstances render necessary. Where a particular form of transfer is prescribed by act of parliament, it is generally introduced by the words 'in the form, or *to the effect*, following:' thus allowing variation from it, when occasion may require.

Why applied to an assignment of a mortgage.

The reason for applying the term 'transfer' to an instrument making over a mortgage security from one party to another, is not very obvious; but it may be, that in most cases neither the word 'assignment' nor 'conveyance' would accurately describe the deed, which usually consists of an assignment of the debt, and a conveyance of the estate in mortgage.

On what occasions transfers of mortgages are made.

Transfers of mortgages, and like securities, are very frequent in practice;—sometimes by way of mortgage, but generally to save the expense of the fresh *ad valorem* duty which would be payable on a new mortgage, or to secure to the transferree priority over some subsequent incumbrance, or as a protection against the bankruptcy of the mortgagor, or party making the security.

Sometimes also, on the marriage of a mortgagee, or on his making arrangements with his creditors, it is found necessary to transfer his mortgage to trustees for the purposes of an intended settlement, or for the benefit of the creditors. In the former case it is advisable to refer to the intended trusts as to the trusts declared thereof in and by an indenture of even date, and made between the transferror, of the first part, the intended wife, of the second part, and the trustees, of the third part, and to make the intended wife a party to the deed of transfer, and

insert therein the usual clauses for making the trustees' receipts sufficient discharges, and for appointing new trustees. In the latter case, it seems best to assign the mortgage debt to the trustees, In trust for the transferror, or as a security to one of the creditors; and by a separate deed,—the creditor-deed,—after reciting the transfer, to make the transferror, or creditor and transferror, join in a declaration that the trustees shall stand possessed of the mortgage debt for the equal benefit of all the creditors.

Mortgagees are not bound to transfer.

A mortgagee is not bound to transfer his security; but only to release the debt, and assign or convey the property in mortgage; and he ought not to be advised to transfer his mortgage without proper indemnity against the loss and expenses he may be made subject to by the use of his name in any legal or equitable proceedings which may be instituted by the transferree in respect of the mortgage.

Transferree subject to the state of accounts between mortgagor and mortgagee.

As the transferree of a mortgage debt takes the debt subject to the state of accounts between the mortgagor and mortgagee, and can only claim what is actually due (*a*), it is important that the mortgagor should join in the transfer; or, when his concurrence cannot be obtained, that he should by letter or otherwise admit what is owing on the security.

Mortgagor should join where interest and costs are to be made principal.

Where part of the sum paid by the transferree is paid in respect of *interest* due on the mortgage, or of the costs incurred in effecting the transfer, and it is intended that the whole sum should carry interest, it is necessary that the mortgagor should be a party to the transfer, as the mortgagee cannot himself make the interest and costs carry interest. In two cases (*b*) it has been held, that money paid by an assignee of a mortgage, in discharge of arrears of interest as well as of the principal sum secured by the mortgage, would carry interest, although the mortgagor was not a party to the assignment; but the contrary seems to be now settled by the later authorities above referred to.

In some cases equity will direct interest on interest.

Equity will, in some cases, of its own authority, direct interest to be paid on interest; but as a general rule, interest will not be converted into principal except by the express agreement of the mortgagor, declared by writing under his hand (*c*), and unless the agreement be stamped with the mortgage duty payable on the amount as on a further advance; and if the mortgagee has *notice* of any subsequent in-

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(*a*) *Earl of Macclesfield* v. *Fitton*, 1 Vern. 169. *Ashenhurst* v. *James*, 3 Atk. 270. *Matthews* v. *Wallwyn*, 4 Ves. 125. *Williams* v. *Sorrell*, ibid. 389. *Chambers* v. *Goldwin*, 9 Ves. 264. *Norrish* v. *Marshall*, 5 Madd. 481.

(*b*) *Gladmon* v. *Henchman*, 2 Vern. 135; and *Smith* v. *Pemberton*, 2 Freem. 184, and 1 Ch. Ca. 67.

(*c*) *Brown* v. *Barkham*, 1 P. Wms. 654.

cumbrance, the interest cannot be made principal, to the prejudice of such incumbrance, even with the mortgagor's consent (*d*).

By whom the expenses of a transfer should be paid.

The expenses of a transfer should be made matter of arrangement, as it is scarcely correct to subject a mortgagor to such expenses without previously giving him notice of the intention to transfer, and an opportunity to pay off the mortgage; but in the absence of any agreement, it seems that the expenses of the transfer must, in case the time appointed for the payment of the debt has past, be borne by the mortgagor (*e*).

If a mortgage is transferred before the time of payment has arrived, and the money is paid at the time appointed, the expenses of the transfer would not, it is conceived, be allowed. Such an allowance would be contrary to the usual terms of the agreement for redemption.

What costs may be tacked to the principal, on a transfer.

The costs of defending the title to an estate in mortgage—of making necessary repairs,—or lasting improvements,—and of attempting to enforce payment of the debt, would be allowed to the mortgagee on a settlement of accounts in equity between him and the mortgagor (*f*); and it therefore seems that on a transfer of the mortgage, the amount of such costs may be tacked to the principal, without any express agreement, and that the same would carry interest, and have priority over the charges created subsequent to the mortgage.

Where a transferree need be a party to a bill for redemption.

In the late case of *Norrish* v. *Marshall* (*g*), it was held by the Vice Chancellor (Sir *J. Leach*), that where a mortgagee assigns the whole benefit of his security to another, he is not a necessary party to a bill for redemption by the mortgagor; but it would seem that if the mortgagee has been in possession of the mortgaged premises, or received any rents from it, he ought to be a party to such bill, and account for the rents and profits received in his time, notwithstanding the assignment (*h*).

Points to be attended to on a transfer by a mortgagee in possession.

Where a mortgagee is *in possession*, there are two very important points to be attended to; the first is, that the mortgagee be careful as *to whom* he assigns the mortgage; for being in possession he is, in some degree, considered, in equity, as a trustee for the mortgagor, and accountable for the profits; and, therefore, if without the consent of the mortgagor, he transfers the mortgage to another person, he will be

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(*d*) *Digby* v. *Craggs*, Amb. 612. 2 Eden, 200.

(*e*) *Wetherell* v. *Collins*, 3 Madd. 255.

(*f*) *Godfrey* v. *Watson*, 3 Atk. 518. *Lucam* v. *Mertius*, 1 Wils. 34. *Manlove* v. *Bale*, 2 Vern. 84. *Hardy* v. *Reeves*, 4 Ves. 480. *Webb* v. *Rorke*, 2 Sch. & Lef. 661. *Quarrell* v. *Beckford*, 1 Madd. 281. *Trimleston* v. *Hamil*, 1 Ba. & Bea. 385.

(*g*) 5 Madd. 478.

(*h*) 2 Eq. Ca. Ab. 594.

liable to account for the profits received *subsequently* to the assignment (*i*); the other is, that the assignment be made in such a manner as not to affect the equity of redemption, or lose the benefit of the past possession, so far as such possession, if continued, may bar the right to redeem. In general, possession of property in mortgage for twenty years, without any recognition by the mortgagee of the mortgagor's title, will operate as a bar to the mortgagor's right to redeem; and therefore where the mortgagee has been some time in possession, it is better simply to convey the estate to the transferree without any allusion whatever to the mortgage debt, or to the right of redemption.

If a *trustee* or agent of the mortgagor buys a mortgage, he will be allowed only what he gives for it.

If the transferree of a mortgage debt be a *purchaser* of it, and pays a less sum for it than is due on account of it, he will nevertheless be entitled to the whole sum that is due (*k*), unless such purchaser should be a *trustee* for the owner of the estate, or stands in a like situation,—as agent, guardian, or executor;—in which cases he will be held to have made the purchase for the benefit of the estate, and be allowed only the money which he may have actually paid (*l*). So also, if an *heir at law* of the mortgagor purchase a mortgage, and there be judgment or specialty creditors, the heir will not be allowed under the transfer, to the prejudice of the creditors, more than he actually gives (*m*). It should, however, be observed, that if in any of the last-mentioned cases the transferree purchases the mortgage as a protection to a subsequent charge or mortgage on the estate, to which he may be entitled *in his own right*, he will be allowed the entire sum due on the transferred security (*n*).

How a mortgage debt secured by a promissory note should be transferred.

Where the debt transferred is secured by a promissory note or other negotiable instrument, and also by conveyance by way of mortgage, the note or other instrument should be endorsed *sans recours* (*o*); or, if the indorsement be unqualified, the estate in mortgage should be transferred to a trustee, as well for the indorser as the indorsee.

As to transfer of equitable mortgage.

An equitable mortgage by deposit of title deeds may be transferred by the delivery or handing over of the deeds (*p*); and a mortga-

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(*i*) 1 Eq. Ca. Ab. 328.

(*k*) *Phillips* v. *Vaughan*, 1 Vern. 336. *Anon.* 1 Salk. 155. *Ascough* v. *Johnson*, 2 Vern. 66. *Morrett* v. *Paske*, 2 Atk. 53. *Darcy* v. *Hall*, 1 Vern. 49.

(*l*) *Morrett* v. *Paske*, *ubi supra*. *Bromley* v. *Holland*, 5 Ves. 620, n.

(*m*) *Brathwaite* v. *Brathwaite*, 1 Vern. 335. *Long* v. *Clopton*, 1 Vern. 464.

(*n*) *Darcy* v. *Hall*, *ubi supra*.

(*o*) *Goupy* v. *Harden*, 7 Taunt. 163.

(*p*) *Smith exparte*, 1 Ves. & Bea. 518.

gee of the legal estate may also transfer the benefit of his security to a third person by delivery of the mortgage deed and bond, and such transfer will be binding on the assignees of the mortgagee, in case of his bankruptcy, and they will be directed to execute the sub-mortgage contract, and transfer the original mortgage accordingly (*q*).

Whether husband can assign his wife's mortgages.

It would seem, from the judgment of the present Lord Chancellor, in *Honner* v. *Morton* (*r*), and the case of *Bates* v. *Danby* (*s*), there referred to, that a husband may, for a valuable consideration, make an effectual assignment of a mortgage debt belonging to his wife, if she is entitled in possession; but later authorities throw great doubt on the subject (*t*).

The stamps to which transfers are subject.

Considerable doubts have been expressed as to the *stamps* to which TRANSFERS of Mortgages are subject: By the 55 Geo. III, c. 184. sched. part I., MORTGAGE, it was provided, that on any transfer or assignment of a mortgage, where the person entitled to the right of redemption should not be made a party, and also where the person who *originally* made the mortgage should continue entitled to the right of redemption and be made a party to the transfer, a stamp of 1*l.* 15*s.* only should be paid, *provided no further sum of money or stock were added to the principal money or stock already secured;* and that in all *other* cases, such transfer or assignment should be charged with the same duty or duties as an original mortgage. Construing these clauses according to their literal meaning, it was thought that in every case in which a sum of money was added on the transfer, the full duty on the whole sum became payable; and many transfers were accordingly subjected to the payment of a full mortgage-duty, and also,—in order to guard against a contrary construction of the above clauses—of a common deed stamp. It was, however, generally considered to have been the intention of the legislature, that on the transfer of a mortgage with a further loan, *ad valorem* duty should only be paid on the additional sum advanced; and with the view of declaring this intention, and of removing some other doubts which had been raised as to the effect of the first above-mentioned clause, the act of the 3 Geo. IV, c. 117. was passed. By the 1st section of this act, the *ad valorem* and other duties by the act of the 55 Geo. III. c. 184, and the act of the 56 Geo. III., c. 56, (the Stamp Act for Ireland,) imposed on "any transfer, assignment, disposition, assignation, or reconveyance of any mortgage, or wadset, or other such security as in the said acts and the schedules thereto annexed, are mentioned, specified, and contained," were repealed; and by the 2d section, the following duties were imposed in

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(*q*) *Jones* v. *Gibbons*, 9 Ves. 411. (*r*) 3 Russ. 86.
(*s*) Ibid. 72. (*t*) *Pierce* v. *Thornley*, 2 Sim. 167.

lieu thereof, (that is to say); upon any transfer, assignment, disposition, assignation, or reconveyance of any mortgage, or of any other security in the said acts and the schedules thereto annexed, in that respect severally mentioned, or of the benefit thereof, or of the money or stock thereby secured, *provided no further sum of money or stock be added to the principal money or stock already secured*, in Great Britain, a stamp duty of one pound fifteen shillings; and in Ireland, a stamp-duty of one pound, British currency, for the first skin or piece of vellum or parchment, or sheet or piece of paper, upon which such transfer, assignment, disposition, assignation, or reconveyance should be engrossed, written, or printed; and where any such transfer, assignment, disposition, assignation or reconveyance, in Great Britain, thereby charged with a duty of one pound fifteen shillings, together with any schedule, receipt, or other matter, put or endorsed thereon or annexed thereto, should contain two thousand one hundred and sixty words or upwards, then for every entire quantity of one thousand and eighty words contained therein over and above the first one thousand and eighty words, a further progressive duty of one pound five shillings; and for every skin, or piece of vellum or parchment, or sheet or piece of paper, beyond the first, upon which any such transfer, assignment, disposition, assignation, or reconveyance should be engrossed, written, or printed in Ireland, a progressive duty of ten shillings, British currency; and if any further sum of money or stock should be added to the principal money or stock then already secured, the *ad valorem* duty on mortgages payable under the said recited acts respectively, should be charged only in respect of such further money or stock.

Question raised on the Act 3 Geo. IV. c. 117.

A question has arisen upon this last act,—whether a transfer in which a further sum is lent by the transferree to the mortgagor, is liable to a common deed stamp and an *ad valorem* duty stamp for the additional sum, or to this last stamp only. There certainly seems ground to contend, from the wording of the act, that the duty of 1*l.* 15*s.* only applies to the first case alluded to by the act, namely, a transfer where no additional sum is lent; but the more general and better opinion is, that the duty of 1*l.* 15*s.* is payable as well on a transfer where a further sum is advanced, as in the other case; and it would be highly imprudent to omit, on such transfer, payment of that duty.

Martin's case.

In *Martin's case*, (*u*) the late Lord Chief Justice of the Common Pleas (now Lord Wynford) expressed an opinion in regard to the construction of the above act, (3 Geo. 4, c. 117), which, if it is to be considered as of any authority, will have the effect of repealing the act to the extent of at least *half* the relief which it is clear it was

(*u*) 5 Bing. 160.

intended to afford. In referring to the act, Lord Wynford is reported to have only alluded to *one half* of the section upon the construction of which the question depended; and, if the section may be properly divided, that half which did *not* in any manner apply to it. His lordship is also reported to have mentioned the third section of the act, which had nothing to do with the case, and to have volunteered an opinion on it which is evidently incorrect, as the section expressly provides for the security extending to further sums. There must be some error in the statement of the case as to figures; for if the additional deed were given for securing 934*l.* it would have been liable to a 5*l. ad valorem* stamp, and not to a 2*l.* stamp, as stated. The case is, throughout, ill-reported.

In the above case, Mr. Justice *Gazelee* is stated to have "begged that he might be understood as giving no opinion on the question about the stamp."

Stamps to which transfers may be thought liable.

In Mr. Chitty's late Treatise on the Stamp Laws, p. 196, the marginal statement of the above case in the report of it, is introduced by way of note, but without any comment. Notwithstanding *Martin's case*, it is submitted, that an assignment or transfer of a mortgage, as an attendant or additional security, is liable only to a common deed stamp.

Considering the uncertainty which at present hangs about the question here adverted to, it seems desirable on the whole, that when a further sum is lent, and an old mortgage transferred, the transfer, and further security, should be made by separate instruments.

Transfer by way of mortgage liable to *ad valorem* duty.

A transfer of a mortgage, *by way of mortgage*, seems clearly liable to *ad valorem* duty on the sum secured.

OF A SHARE IN A CANAL COMPANY.

Transfer *of a Share in the Neath* Canal *Navigation.*

Transfer of a share in a canal company.

Know all men by these presents, that I [A. B.], of, &c. (to whom the shares hereinafter mentioned, were bargained, sold, and transferred, by a certain deed of bargain and sale, or transfer, bearing date the day of , and duly registered with the clerk of the Neath Canal Navigation, but as a trustee only for [C. D.], late of, &c. Esquire, deceased,) *Do* hereby, at the request of [X. Y.], of, &c. and [Y. Z.], of, &c. (the surviving trustees and executors of the last will and testament in writing of the said [C. D.], bearing date the day of , and duly proved in the Prerogative Court of the Archbishop of Canterbury, on the day of), and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, to me paid by them at or immediately before the sealing of these presents, (the receipt whereof is hereby acknowledged), bargain, sell, and transfer, unto the said [X. Y.], and [Y. Z.], their executors, administrators, and assigns, All those Five Shares in the Neath Canal Navigation, being numbers 20, 24, 26, 28, and 30, of the shares in the said navigation, *And* all my right, title, and interest therein and thereto, To hold the same, unto the said [X. Y.], and [Y. Z.], their executors, administrators, and assigns, *Upon* and for the several trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, in and by the said will of the said [C. D.], expressed and contained of and concerning the same; *And* under and subject to the same rules and orders, and on the same conditions, as I held the same immediately before the execution hereof; And we the said [X. Y.], and [Y. Z.], do hereby agree to accept the said five shares, under and subject to the same rules, orders, and conditions. Witness our hands and seals, this day of , in the year of our Lord, 182 .

to the trustees of a will, upon the trusts therein declared concerning the same.

ASSIGNMENT OF MORTGAGE DEBT, AND RELEASE IN FEE OF THE ESTATES IN MORTGAGE.

TRANSFER *of a* MORTGAGE: *being an* ASSIGNMENT *of the Mortgage Debt, and* RELEASE *in* FEE *of the Estates in Mortgage, subject to the Equity of Redemption subsisting therein* (*a*).

THIS INDENTURE, made the day of , BETWEEN [*mortgagee*] of, &c. of the first part; [*mortgagor*] of, &c. of the second part; and [*transferree*] of, &c. of the third part: WHEREAS, by indentures of lease and release, bearing date respectively the and days of , the release being made, or expressed to be made, between the said [*mortgagor*], of the one part; and the said [*mortgagee*], of the other part; the messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby released, with their appurtenances, were (in consideration of the sum of pounds, by the said [*mortgagee*] to the said [*mortgagor*] paid, as in the said indenture of release is mentioned) conveyed by the said [*mortgagor*] unto and to the use of the said [*mortgagee*], his heirs and assigns for ever; *But* subject nevertheless to a proviso or condition, and covenant or agreement, in the said indenture of release contained for redemption of the same premises, on payment by the said [*mortgagor*], his heirs, executors, administrators or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of

Parties.

Recital of the mortgage deed;

(*a*) Sometimes the transfer is made by a simple assignment or conveyance of the estate in mortgage, subject to the subsisting right or equity of redemption therein; but the form here inserted is the most usual and technical form: for although the estate of the mortgagee is absolute at law on non-payment of the money secured at the time mentioned in the condition, the debt is subsisting, both at law and in equity, until foreclosure.

Mode of transfer.

ASSIGNMENT OF MORTGAGE DEBT, AND RELEASE IN FEE OF THE ESTATES IN MORTGAGE.

pounds, with interest for the same, after the rate of five pounds for one hundred pounds by the year, on or at the days or times in the same indenture mentioned, and long since past, for the payment thereof respectively; *And* by the said indenture of release the said [*mortgagor*] covenanted with the said [*mortgagee*], his executors, administrators, and assigns, for the due payment to him or them of the said sum of pounds, and interest, on or at the days or times thereinbefore mentioned for the payment of the same; AND WHEREAS by a bond or obligation in writing, under the hand and seal of the said [*mortgagor*], bearing even date with the said hereinbefore recited indenture of release, the said [*mortgagor*] became bound unto the said [*mortgagee*], his executors and administrators, in the sum of pounds, subject to a condition written under the said bond, for making void the same on payment by the said [*mortgagor*], his heirs, executors, or administrators, to the said [*mortgagee*], his executors, administrators, and assigns, of the sum of pounds, with interest for the same after the rate of five pounds for one hundred pounds by the year, on or at the days or times in the said condition mentioned and appointed for the payment thereof, being the same sum and interest as were secured, or intended to be secured by the hereinbefore recited indentures; AND WHEREAS the said principal sum of pounds, so secured as aforesaid, is still due and owing, but all interest which hath become due for the same, up to the day of the date of these presents, hath been paid or satisfied, as he the said [*mortgagee*] doth hereby admit and acknowledge; AND WHEREAS the said [*mortgagee*], having occasion for the said sum of pounds, so secured as aforesaid, and it being inconvenient to the said [*mortgagor*] immediately to pay off the same, the said [*transferee*] hath agreed, at the request of the said [*mortgagor*], to advance and pay to the said [*mortgagee*] the sum of pounds, and to accept and take from him a transfer or assignment of the said mortgage debt or sum of that amount, so secured as aforesaid, and of the interest hereafter to become due for the same, and of the securities for the same respectively: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of pounds

of a bond of even date;

that the principal sum is owing, but all interest has been paid;

that the mortgagee, wanting his money, and the mortgagor not being able to pay it, the transferee has agreed to advance the money, and accept a transfer of the securities.

First witnessing part.

ASSIGNMENT OF MORTGAGE DEBT, AND RELEASE IN FEE OF THE ESTATES IN MORTGAGE.

of lawful money of Great Britain and Ireland, by the said [*transferree*] to the said [*mortgagee*], at the request and by the direction of the said [*mortgagor*], (testified by his being a party to and sealing and delivering these presents,) in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of pounds the said [*mortgagee*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*transferree*], his heirs, executors, administrators, and assigns,) HE the said [*mortgagee*], at the request and with the privity and approbation of the said [*mortgagor*], (testified by his being a party to, and sealing and delivering these presents,) *Hath* bargained, sold, assigned, and set over, *And* by these presents *Doth* bargain, sell, assign, and set over unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT the said debt or sum of pounds, so due and owing, and secured to the said [*mortgagee*], as hereinbefore is mentioned and recited, and all interest henceforth to become due for the same; *And* also the said covenant and bond, or obligation, whereby the same sum and interest are respectively secured as aforesaid, and the full benefit and advantage thereof respectively (*b*), *And* all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagee*], in, to, out of, or upon the same sum, interest, and premises hereby assigned, or intended so to be, and every of them, and every part thereof, TO HAVE, HOLD, RECEIVE, AND TAKE the said sum of pounds, interest, and all and singular

In consideration of —— *l.*, paid to mortgagee,

the mortgagee assigns the mortgage-debt to the transferree.

(*b*) Instead of the power of attorney which follows the habendum, it is not uncommon to insert in this place a short form, in these or like words:

"*Together* with all the powers and authorities of the said [*mortgagee*], to demand, sue for, recover and receive, and give effectual releases, acquittances, and other discharges for the said sum and interest hereby assigned, or intended so to be, and every or any part thereof."

ASSIGNMENT OF MORTGAGE DEBT, AND RELERSE IN FEE OF THR ESTATES IN MORTGAGE.

other the premises hereby assigned, or intended so to be, and every of them, and every part thereof, unto the said [*transferree*], his executors, administrators, and assigns, for his and their own absolute use and benefit: And for the better enabling the said [*transferree*], his executors, administrators, and assigns, to receive and take the said sum of pounds, and the interest thereof, hereby assigned, or intended so to be, He the said [*mortgagee*] *Doth* hereby irrevocably make, nominate, and appoint, and in his place and stead put the said [*transferree*], his executors, administrators, and assigns, to be the true and lawful attorney and attornies of him the said [*mortgagee*], to demand and sue for, recover, and receive of and from the said [*mortgagor*], his executors or administrators, or other the persons or person who are, is, or shall or may be liable to pay the same respectively, the said sum of pounds and interest hereby assigned, or intended so to be, *And* on payment thereof, or of any part thereof respectively, to give, sign, and execute receipts, acquittances, releases, and other discharges for the same respectively; *And* on non-payment thereof, or of any part thereof respectively, to bring, commence, carry on, and prosecute, such actions, suits, or other proceedings for recovering and compelling the payment thereof respectively, as to him or them shall seem expedient or proper; *And* for all or any of the purposes aforesaid, to use the name of the said [*mortgagee*], *And* generally to do, execute, and perform any other act, deed, matter or thing whatsoever, relative to the premises, as fully, to all intents and purposes whatsoever, as he the said [*mortgagee*] might or could do in his own proper person, in case these presents had not been executed; *And* whatsoever the said [*transferree*], his executors, administrators, or assigns, shall lawfully do, or cause to be done, in or about the premises, the said [*mortgagee*] doth hereby for himself, his executors, administrators, and assigns, covenant and agree with and to the said [*transferree*], his heirs administrators, and assigns, to allow, ratify, and confirm:

Power of attorney to enable the transferee, in the name of the mortgagee, to recover and receive the debt and interest.

Second witnessing part.

The mortgagee conveys to the transferree

And this indenture further witnesseth, that in consideration of the said sum of pounds by the said [*transferree*] to the said [*mortgagee*] so paid as hereinbefore is mentioned, and of the sum of ten shillings, of like

lawful money, by the said [*transferree*] to the said [*mortgagee*] paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), HE the said [*mortgagee*], at the request, and with the privity and approbation of the said [*mortgagor*], (so testified as aforesaid,) *Hath* bargained, sold, and released, *And* by these presents *Doth* bargain, sell, and release; *And* the said [*mortgagor*] *Hath* bargained, sold, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release, and confirm, unto the said [*transferree*], (in his actual possession now being, &c. *reference to a lease for a year*), and his heirs, ALL THAT messuage or tenement, &c. (*parcels*), *Together* with all and singular houses, outhouses, &c. (*general words*), *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby released, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [*transferree*] and his heirs, *To the use* of him the said [*transferree*], his heirs and assigns for ever; *But* subject nevertheless to such right, title, and equity of redemption, as the same messuages or tenements, lands, hereditaments, and premises, are now subject or liable to, under or by virtue of the said hereinbefore recited indenture of release; AND the said [*mortgagee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT and declare with and to the said [*transferree*], his heirs, executors, administrators and assigns, that he the said [*mortgagee*] hath not, at any time heretofore, made, done, committed, executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said principal sum and interest, securities, and premises hereby assigned, or intended so to be, or the said messuages or tenements, lands, hereditaments, and premises hereby released, or intended so to be, or any of them, or any part thereof, are, is, can, shall or may be in anywise impeached, charged, assigned, discharged, affected, or encumbered. (*Covenants from* [*mortgagor*] *with* [*transferree*], *that he the mortgagor has not since the execution of the* herein-

ASSIGNMENT OF MORTGAGE DEBT, AND RELEASE IN FEE OF THE ESTATES IN MORTGAGE.

mortgaged premises.

Habendum to the transferee in fee;

but subject to the equity of redemption subsisting under the said indenture of mortgage.

Mortgagee covenants that he has not incumbered the premises.

ASSIGNMENT OF MORTGAGE DEBT, &c.

before recited indenture, *done any act to encumber,* and that he and all *persons claiming under him, will execute further assurance.*) IN WITNESS, &c.

OF A MORTGAGE DEBT, SECURED BY A DEMISE.

**TRANSFER *of a* MORTGAGE DEBT *or Sum of Pounds, secured by a* DEMISE *for a Term of Years, and by the* COVENANT *of the Mortgagor; and* ASSIGNMENT *of the* SECURITIES *for the same:—the Transferree being nominated on behalf of a* PURCHASER, *to whom the* FEE *was conveyed by Indentures of Lease and Release, of even Date* (*a*).

Parties.

THIS INDENTURE, made the day of , 18 , BETWEEN [*mortgagee*] of &c. of the first part; [*mortgagor*] of, &c. of the second part; and [*transferree*] of, &c. of the third part; WHEREAS by an indenture of

Recital of a mortgage for a term of 1000 years;

appointment and demise, bearing date the day of , and made, or expressed to be made, between the the said [*mortgagor*] of the one part; and the said [*mortgagee*] of the other part; ALL, &c. (*parcels*) were, (in consideration of the sum of pounds by the said [*mortgagee*] to the said [*mortgagor*] paid, as in the said indenture is mentioned) appointed and demised by the said

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Caution against bankruptcy.

(*a*) Where on the completion of a purchase, the property purchased is sold by a trader or other person liable to the bankrupt law, mortgages are frequently kept on foot, in order that the purchaser may, to that extent, be safe, although a commission of bankrupt should be issued against the vendor within two months from the date of the conveyance.

If the excess of the purchase-money over the sums due on the mortgage is considerable, it should be invested in Exchequer bills, or other securities, in the names of trustees, upon trust for the vendor, if no such commission shall be issued within the above time; and for the purchaser, in case a commission shall be so issued.

[*mortgagor*] unto and to the use of the said [*mortgagee*], his executors, administrators, and assigns, for the term of one thousand years, to commence and be computed from the day of the date of the said indenture; *But* subject nevertheless to a proviso or condition in the said indenture contained for cesser of the said term (*b*), on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of pounds, with interest for the same, after the rate of five pounds for one hundred pounds by the year, on the day of then next ensuing, which said sum and interest were not then paid; *And* in the said indenture was contained a covenant on the part of the said [*mortgagor*] for payment of the said sum of pounds, and interest, on the day thereinbefore mentioned and appointed for the payment of the same: AND WHEREAS the said principal sum of pounds, secured to the said [*mortgagee*], his executors, administrators, and assigns, by the said hereinbefore recited indenture as aforesaid, still remains due and owing, but all interest which hath become due in respect thereof hath been paid and satisfied up to the day of the date of these presents, as the said [*mortgagor*] and [*mortgagee*] do hereby respectively admit and declare: AND WHEREAS the said [*transferree*] hath agreed, at the request of the said [*mortgagor*], to advance and pay to the said [*mortgagee*] the sum of pounds, upon having the said mortgage debt or sum of pounds, and the interest which shall hereafter become due for the same, and the securities for the same respectively, assigned and made over to him the said [*transferree*] in manner hereinafter expres-

OF A MORTGAGE DEBT, SECURED BY A DEMISE.

that the money thereby secured is still owing, but all interest has been paid;

that transferee has agreed to pay the mortgage debt, and take an assignment of the same, and of the securities thereof.

(*b*) If the condition declares, that on payment of the money, the *indenture* shall be void, say,

"for making void the same indenture."

If it provides for the re-assignment of the premises on payment of the money, say,

"for redemption of the said premises, and re-assignment or surrender of the same, for the then residue of the said term."

OF A MORTGAGE DEBT, SECURED BY A DEMISE.

sed: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain, by the said [*transferree*], at the request and by the direction of the said [*mortgagor*], (testified, &c.), to the said [*mortgagee*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of pounds the said [*mortgagee*] doth hereby admit and acknowledge (*c*), and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*transferree*], his heirs, executors, administrators, and assigns,) HE the said [*mortgagee*], at the request and by the direction of the said [*mortgagor*], (so testified as aforesaid,) *Hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* bargain, sell, assign, transfer, and set over, unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT the said debt or sum of pounds, secured or intended to be secured to the said [*mortgagee*], his executors, administrators and assigns, by the said hereinbefore recited indenture as aforesaid, *And* all interest which shall hereafter become due for the same debt or sum, *And* also the said covenant of the said [*mortgagor*] for the payment of the same debt or sum and interest, and the full benefit or advantage thereof, *And* all the right, title, interest, property, claim, and demand whatsoever, both at law or in equity, of him the said [*mortgagee*] in, to, out of, or upon the same sum and interest, and every part thereof, *Together* with full power and authority to and for the said [*transferree*], his executors, administrators, or assigns, in his or their own name or

First witnessing part.

In consideration of —— *l.* paid by transferee,

the mortgagee assigns the mortgage debt and future interest

(*c*) Some persons add the words,

"*And* declare the same to be in full satisfaction and discharge of the principal monies and interest, secured by the said hereinbefore recited indentures as aforesaid;"

but they seem inapplicable in a *transfer* of a mortgage; for it is inconsistent in one part of the deed to represent the debt as satisfied and discharged, and in a subsequent part of it, to assign the debt as still subsisting.

names, or in the name or names of the said [*mortgagee*], his executors, administrators, or assigns, but at his or their own costs and charges, to receive and take, and give effectual receipts and other discharges for the said debt or sum, and interest, hereby assigned, or intended so to be, and on non-payment thereof, or of any part thereof, to commence, prosecute, take, and adopt such actions, suits, measures, and proceedings at law and in equity as to him or them shall seem necessary or advisable, To HAVE, HOLD, RECEIVE, AND TAKE the said debt or sum of pounds, interest, covenant, and all and singular other the premises hereby firstly assigned, or intended so to be, and every of them, unto the said [*transferree*], his executors, administrators, and assigns, for his and their own absolute use and benefit. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of pounds, so paid to the [*mortgagee*] by the said [*transferree*], as hereinbefore is mentioned, HE the said [*mortgagee*], at the request and by the direction of the said [*mortgagor*], (so testified as aforesaid,) *Hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* bargain, sell, assign, transfer, and set over, unto the said [*transferree*], his executors, administrators, and assigns, ALL and singular the said messuages or tenements, lands, hereditaments, and premises, which were so comprised in and appointed and demised by the said hereinbefore recited indenture as aforesaid, with their and every of their appurtenances, *And* all the estate, &c., To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby secondly assigned, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [*transferree*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of one thousand years, created therein by the said hereinbefore recited indenture as aforesaid; *But* subject nevertheless to such right, title, and equity of redemption as is now subsisting in the said premises, under or by virtue of the same indenture; AND the said [*mortgagee*] doth hereby for himself, his heirs, executors,

OF A MORTGAGE DEBT, SECURED BY A DEMISE.

to transferree absolutely.

Second witnessing part.

Mortgagee assigns all the premises

to transferree, for the residue of the term of 1000 years,

subject to the subsisting equity of redemption.

Mortgagee covenants with

OF A MORTGAGE DEBT, SECURED BY A DEMISE.

transferee, that he has done no act to incumber the mortgage debt, or the premises.

and administrators, COVENANT and declare, with and to the said [*transferee*], his executors, administrators, and assigns, that he the said [*mortgagee*] hath not at any time heretofore made, done, committed or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said debt or sum of pounds, interest, covenant, and premises hereby firstly assigned, or intended so to be, or the said messuage or tenement and premises hereby secondly assigned, or intended so to be, or any of them, or any part thereof respectively, or the said term of one thousand years, created as aforesaid, are, is, can, shall, or may be in anywise impeached, charged, assigned, released, discharged, surrendered, affected, or incumbered, in any manner howsoever. IN WITNESS, &c.

DECLARATION OF TRUST OF A MORTGAGE DEBT.

DECLARATION *of* TRUST *of a Mortgage Debt or Sum of Pounds, and of the Securities for the same, by a Party to whom the same were transferred, as a* TRUSTEE *for a* PURCHASER *of the Estate comprised in the Mortgage.*

Recites a mortgage for a term of a years.

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*transferree*] (*a*) of, &c. sendeth greeting; WHEREAS by an indenture of appointment and demise, bearing date the day of , and made, &c. BETWEEN, &c. (*recite the appointment and demise, as ante*, p. 208):

the transfer of even date.

AND WHEREAS by an indenture of assignment (*b*), bearing even date with these presents, and made, or expressed to be made, between the said [*mortgagee*] of the first part;

(*a*) The Transferree named in the last precedent.

(*b*) The last precedent.

the said [*mortgagor*], of the second part; and the said [*transferree*], of the third part (*recite this transfer, nearly as in the next precedent*): AND WHEREAS by indentures of lease and appointment and release, the lease bearing date the day next before the day of the date of the appointment and release, and the appointment and release (*c*) bearing even date with these presents, and made, or expressed to be made, between the said [*mortgagor*], of the first part; [*purchaser*], of, &c., of the second part; and [*trustee to bar dower*], therein described, of the third part; the said messuages or tenements, lands, hereditaments, and premises, comprised in and appointed and demised by the said hereinbefore recited indenture of appointment and demise as aforesaid, and their appurtenances, and the inheritance thereof in fee-simple in remainder or reversion, immediately expectant upon the determination of the said term of one thousand years, have (in consideration of the sum of pounds, by the said [*purchaser*] to the said [*mortgagor*] paid, as in the said indenture of appointment and release is mentioned) been appointed and conveyed by the said [*mortgagor*], *To the use* of the said [*purchaser*] and his assigns, during his life, &c. (*Usual uses to bar dower*, see Vol. VI, p. 276;) *But* subject nevertheless to the payment of the said mortgage debt or sum of pounds assigned to the said [*transferree*], his executors, administrators, and assigns, by the said lastly hereinbefore recited indenture as aforesaid, and the interest hereafter to become due for the same: NOW KNOW YE, that the said sum of pounds, which in the said hereinbefore recited indenture of assignment is expressed to have been paid by the said [*transferree*] to the said [*mortgagee*], as hereinbefore is mentioned, hath been paid by the said [*transferree*] with and out of certain monies of or belonging to the said [*purchaser*], and not with and out of the proper monies of him the said [*transferree*]; *And* that the name of the said [*transferree*] hath been used in the said last-mentioned indenture, *In trust* only for the said [*purchaser*]; *And* that he the said [*transferree*], his executors, administrators,

DECLARATION OF TRUST OF A MORTGAGE DEBT.

Declaration that the money expressed to be paid in the indenture of assignment of even date, by the transferee, was paid out of monies belonging to the purchaser of the premises, and not out of monies belonging to the transferee;

(*c*) The next precedent.

DECLARATION OF TRUST OF A MORTGAGE DEBT.

and that the transferee shall stand possessed of the mortgage-debt and interest, and of the securities for the same, In trust for the purchaser, his heirs and assigns, and to assign the same, as he or they shall direct.

and assigns, shall and will stand and be possessed of and interested in the said mortgage debt or sum of pounds, and interest, which have been so assigned to him and them by the said last-mentioned indenture as aforesaid, *And* also of and in the said messuages or tenements, lands, hereditaments and premises, which have been assigned to him and them by the same indenture, as hereinbefore is mentioned, and their appurtenances (*d*), *In trust* for the said [*purchaser*], his heirs, executors, administrators, and assigns, *And* to assign and dispose of the same as he or they shall from time to time order or direct. IN WITNESS, &c.

(*d*) In cases of this kind, it is better to make the purchaser join in the declaration of trust, for the purpose of directing whether the incumbrance shall be kept on foot as personal estate, or be attendant upon the inheritance. If it is intended to keep the incumbrance on foot as personal estate, the trust may be as follows:

A trust to keep the charge on foot.

"*In Trust* for the said [ ], his executors, administrators, and assigns, *To the end and intent* that the said mortgage debt or sum of pounds may be preserved and kept on foot, as a subsisting incumbrance on the said messuages or tenements, lands, hereditaments, and premises, so charged with the payment thereof as aforesaid."

If it is intended that the incumbrance should be attendant on the inheritance, the following form may be used:

A trust to permit a charge to attend the inheritance.

"*In trust* for the said [ ], his heirs and assigns, and to assign and dispose of the same as he or they shall from time to time direct or appoint; *And* in the mean time, *In trust* to permit the same to wait upon and attend the freehold and inheritance of the said messuages or tenements, lands, hereditaments, and premises, comprised in and appointed and conveyed by the said lastly hereinbefore recited indentures, as aforesaid, and to protect the same from all mesne incumbrances, if any such there be."

In the above case, where the mortgage debt was kept on foot merely as a protection against the issuing of a commission of bankrupt within two months from the date of the conveyance, the trusts had better,

CONVEYANCE OF AN ESTATE, SUBJECT TO A MORTGAGE THEREON, TRANSFERRED TO A TRUSTEE FOR THE PURCHASER.

CONVEYANCE IN FEE *of Messuages and other Hereditaments to a* PURCHASER, *subject to a Mortgage Debt of Pounds, and to a* TERM *of* YEARS *created for securing the same.*

THIS INDENTURE, made the day of , BETWEEN [*vendor*] of, &c. of the first part; [*purchaser*], of, &c. of the second part; and [*trusteee to bar dower*] of, &c. of the third part; WHEREAS by indentures of lease and release, bearing date respectively the and days of , the release being made, or expressed to be made, between [A. B.], therein described, of the first part; the said [*vendor*], of the second part; and [X. Y.], therein described, of the third part; the messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released,

Parties.

Recital of indentures of lease and release, whereby premises were conveyed to vendor, to the usual uses to bar dower;

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perhaps, have been as follows;—the purchaser joining in the declaration of trust:

"*Upon* the trusts following (that is to say): If a commission of bankrupt shall happen to be awarded and issued against the said [*vendor*] within the space of two calendar months, to be computed from the day next after the day of the date of the said hereinbefore recited indenture of appointment and release, *In trust* for the said [*purchaser*], his executors, administrators, and assigns, and to assign and dispose of the same as he or they shall from time to time direct or appoint; *But* if no commission of bankrupt shall be awarded and issued against the said [*vendor*] within the said space of two calendar months, to be computed as aforesaid; Then, *In trust* for the said [*purchaser*], his heirs and assigns," &c. (*to attend the inheritance, as above*).

Trusts where the charge is kept on foot as a protection against bankruptcy.

CONVEYANCE OF AN ESTATE, SUBJECT TO A MORTGAGE THEREON, TRANSFERRED TO A TRUSTEE FOR THE PURCHASER.

and their appurtenances, were (for the considerations in the said indenture of release mentioned), conveyed by the said [A. B.], *To such uses*, upon such trusts (*usual uses to bar dower, in favour of* [*vendor*], *see* Vol. VI, p. 271): AND WHEREAS by an indenture of appointment and demise, bearing date the day of , and made, or expressed to be made, between the said [*vendor*], of the one part, and [*mortgagee*] (*a*), of the other part; (*recite the appointment and demise, as ante*, p. 208;) AND WHEREAS by an indenture of assignment (*b*), bearing even date with, and executed immediately before these presents, and made, or expressed to be made, between the said [*mortgagee*], of the first part; the said [*vendor*], of the second part; and [E. F.], therein described (*c*), of, &c. of the third part; the said mortgage debt or sum of pounds, secured by the therein and hereinbefore recited indenture of appointment and demise, as aforesaid, together with the interest which shall henceforth become due for the same, has (in consideration of the sum of pounds, by the said [E. F.] to the said [*mortgagee*] paid, as in the said indenture now in recital is mentioned,) been assigned by the said [*mortgagee*] unto the said [E. F.], his executors, administrators, and assigns, for his and their own absolute use and benefit; *And* by the said indenture now in recital, the said messuages or tenements, lands, hereditaments, and premises, comprised in and appointed and demised by the said therein and herein before recited indenture of appointment and demise as aforesaid, and their appurtenances, have (for the considerations in the said indenture now in recital mentioned) been assigned by the said [*mortgagee*] unto the said [E. F.], his executors, administrators, and assigns, for the residue and remainder which is now unexpired of the said term of one thousand years, created therein by the said indenture of appointment and demise, as aforesaid; *But* subject nevertheless to such right, title, and equity of redemption as is now subsisting in the same premises by

of a mortgage for a term of 1000 years;

of the transfer of the mortgage.

(*a*) The mortgagee, in the last precedent but one.

(*b*) The last precedent but one.

(*c*) The transferree, in the last precedent but one.

CONVEYANCE OF AN ESTATE, SUBJECT TO A MORTGAGE THEREON, TRANSFERRED TO A TRUSTEE FOR THE PURCHASER.

virtue of the said last-mentioned indenture; AND WHEREAS the said [*vendor*] hath contracted and agreed with the said [*purchaser*] for the absolute sale to him the said [*purchaser*] of the said messuages or tenements, lands, hereditaments and premises hereinafter described, and intended to be hereby granted and released, and their appurtenances, and the inheritance thereof in fee-simple in possession, free from incumbrances, save and except the said mortgage debt or sum of pounds, assigned to the said [E. F.] by the said lastly hereinbefore recited indenture as aforesaid, and the interest which shall hereafter become due for the same, at or for the price or sum of pounds; AND WHEREAS the said [*purchaser*] is desirous that the said messuages or tenements, lands, hereditaments and premises, so sold to him as aforesaid, should be conveyed and assured to the uses hereitafter declared of and concerning the same: NOW THIS INDENTURE WITNESSETH, that in pusuance and part performance of the said agreement, and in consideration of the sum of pounds (*d*) of lawful money of Great Britain and Ireland by the said [*purchaser*] to the said [*vendor*] in hand well and truly paid, at &c. (the receipt, &c.) HE the said [*vendor*], pursuant to, &c. *Doth* by this present deed or instrument in writing, by him sealed, &c. direct, limit, and appoint, that the said messuages, &c. (*as in* Vol. VI, p. 274,) shall, (subject and without prejudice to the said mortgage debt or sum of pounds, &c. *as in the habendum of the next witnessing part*), go, remain, and be To the uses hereinafter declared concerning the same: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of pounds, by the said [*purchaser*] so paid to the said [*vendor*], as hereinbefore is mentioned, HE the said [*vendor*] *Hath* granted, bargained, released, aliened, and confirmed, *And* by these presents *Doth* grant, bar-

The contract for the sale of the premises, subject to the mortgage.

And the purchaser's desire that the premises should be conveyed to the uses after mentioned.

First witnessing part.

Vendor in pursuance of his power, appoints that the premises shall, subject to the mortgage, remain to uses after mentioned.

Second witnessing part.

Vendor conveys to the purchaser.

(*d*) It is to be remembered, that in estimating the *ad valorem* duty payable on the conveyance of an equity of redemption, the sum due on the mortgage is to be added to the sum paid for the equity of redemption. See 55 Geo. III. c. 184. Sched. part 1. CONVEYANCE, sect. 8.

CONVEYANCE OF AN ESTATE, SUBJECT TO A MORTGAGE THEREON, TRANSFERRED TO A TRUSTEE FOR THE PURCHASER.

gain, sell, alien, release, and confirm, unto the said [*purchaser*], (in his actual possession, &c.) and his heirs, ALL, &c. (*parcels*), *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, (subject and without prejudice to the said mortgage debt or sum of pounds, so assigned and transferred to the said [E. F.], his executors, administrators, and assigns, by the said lastly hereinbefore recited indenture as aforesaid, and to the interest hereafter to become payable for the same, and also to the said term of one thousand years created for securing the same sum and interest, as hereinbefore is mentioned,) unto the said [*purchaser*] and his heirs, *To the uses* hereinafter declared concerning the same; (*Declaration that the assignment and release shall enure to usual uses to bar dower in favour of* [*purchaser*], *see* Vol. VI, p. 276. *Covenants for title from* [*vendor*], *see* Vol. VI, *p.* 277.) AND the said [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*vendor*], his heirs, executors, and administrators, that he the said [*purchaser*], his heirs, executors, or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said [E. F.], his executors, administrators, or assigns, within seven days after demand by him or them in writing, the said mortgage debt or sum of pounds, which has been assigned to him and them by the said lastly hereinbefore recited indenture as aforesaid, and also the interest which shall hereafter become due for or in respect of the same; *And* shall and will from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified the said [*vendor*], his heirs, executors, and administrators, and his and their estates and effects whatsoever and wheresoever, from and against the payment of the same debt or sum, and interest, and every part thereof respectively, and from and against all actions, suits, losses, damages, costs, and expenses whatsoever for or on account of the same, or in anywise relating thereto. IN WITNESS, &c.

parcels.

Habendum in fee, (subject to the mortgage debt and interest, and the term of years for securing the same,) to uses after mentioned.

Declaration that appointment and release shall enure to such uses as purchaser shall appoint, and to bar dower.

Covenants for title.

The purchaser covenants to pay mortgage debt and interest within seven days after demand,

and to indemnify the vendor therefrom.

TRANSFER *or* ASSIGNMENT *of* TWO MORTGAGE DEBTS *to* TRUSTEES, *upon the Trusts declared thereof by an Indenture of* SETTLEMENT *of even Date, such Transfer being made in Contemplation of a Marriage, and with the Privity of an intended Wife.*

OF TWO MORTGAGE DEBTS TO TRUSTEES OF A SETTLEMENT.

THIS INDENTURE, made, &c. BETWEEN [*transferror*] of, &c. of the first part; [*intended wife of transferror*] of, &c. of the second part; [*one trustee*] of, &c. and [*other trustee*], of, &c. of the third part: WHEREAS by an indenture of demise, bearing date on or about the day of , 182 , and made, or expressed to be made, between [A. B.], therein described, of the one part, and the said [*transferror*], of the other part, *All that* messuage or tenement, situate, &c. (*parcels*), and their appurtenances, were (in consideration of the sum of pounds by the said [*transferror*] to the said [A. B.] paid, as in the said indenture is mentioned) demised by the said [A. B.] unto the said [*transferror*], his executors, administrators, and assigns, for the term of one thousand years thence next ensuing; *But* subject nevertheless to a proviso or condition in the same indenture contained for redemption of the same premises, on payment by the said A. B., his executors, administrators, or assigns, to the said [*transferror*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same after the rate of five pounds for one hundred pounds by the year, on the day of then next ensuing (*recite the covenant for payment, as ante*, p. 209): AND WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , 182 , the release being made, or expressed to be made, between [X. Y.], therein described, of the first part; [Y. Z.], therein de-

Parties.

Recital of a mortgage by demise;

of a mortgage in fee.

OF TWO MORTGAGE DEBTS TO TRUSTEES OF A SETTLEMENT.

scribed, of the second part; and the said [*transferror*], of the third part; *All that* piece or parcel of land, &c. (*parcels*), and their appurtenances, were (in consideration of the sum of pounds by the said [*transferror*] to the said [Y. Z.] paid, as in the said indenture of release is mentioned, and for the nominal consideration therein expressed) conveyed by the said [X. Y.], and conveyed and confirmed by the said [Y. Z.], unto and to the use of the said [*transferror*], his heirs and assigns for ever; *But* subject nevertheless to a proviso or condition in the same indenture contained for the redemption of the same premises, on payment by the said [Y. Z.], his heirs, executors, administrators, and assigns, to the said [*transferror*], his executors, administrators, and assigns, of the sum of pounds, with interest for the same after the rate of five pounds for one hundred pounds by the year, on or at the days or times, and in the manner in the said indenture of release mentioned, and now long since past, for the payment thereof; *And* by the said indenture of release it was provided and agreed, that if default should be made in payment of the said sum of pounds, and the interest thereof, or of any part thereof, contrary to the proviso or agreement for payment of the same thereinbefore contained, and the said [*transferror*], his executors, administrators, or assigns, should, at any time or times thereafter, by any writing or writings, under his or their hand or hands, to be given to the said [Y. Z.], his heirs, executors, administrators, or assigns, or left at his or their usual or last known place or places of abode in England, call in and require payment of the same sum and interest, or such part thereof as should be then owing, *And* the same should not be paid within six calendar months next after the same should be so called in and be required to be paid as aforesaid, *Then*, and in such case, and at any time thereafter, it should be lawful for the said [*transferror*], his heirs or assigns, absolutely to sell and dispose of the said pieces or parcels of land, hereditaments, and premises thereinbefore released, or any of them, or any part thereof, either by public auction or private contract, as he or they should think fit, and for such price or prices as he or they should think reasonable or proper; *And* for that purpose to enter into,

With power of sale, in case of default.

OF TWO MORTGAGE DEBTS TO TRUSTEES OF A SETTLEMENT.

make, and execute all such agreements, conveyances, and assurances, as to him or them should seem expedient; *And* by the said indenture of release it was provided and agreed, that in case the said pieces or parcels of land, hereditaments, and premises thereby released, or any part thereof, should be sold under the power or authority therein contained, the said [*transferror*], his heirs or assigns, should, with and out of the monies which should arise from such sale or sales, in the first place pay and discharge the costs and expenses of or attending the said sale or sales, and in the next place, pay or retain and satisfy the said sum of pounds, and interest, secured by the said indenture of release, or so much thereof respectively as should then remain due, and should pay the surplus or residue of the said monies (if any) unto the said [Y. Z.], his heirs, executors, administrators, or assigns (*Recite the covenant for payment, and the collateral bond of even date, as ante*, p. 204): AND WHEREAS the said sums of pounds and pounds, secured by the hereinbefore recited indentures, as aforesaid, are still due and owing, but all interest which hath become due for the same, hath been paid, as he the said [*transferror*] doth hereby testify and declare; AND WHEREAS a marriage is agreed upon, and intended to be shortly had and solemnized between the said [*transferror*] and the said [*intended wife*], and upon the treaty for the same it was agreed, that the said hereinbefore mentioned debts or sums, and the interest thereof, and the securities for the same respectively, should be assigned to the said [*trustees*], upon the trusts hereinafter mentioned or referred to of and concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the premises, and of the sum of ten shillings, of, &c. by the said [*trustees*] to the said [*transferror*] paid, at, &c. (the receipt, &c.) HE the said [*transferror*], with the privity and approbation of the said [*intended wife*], (testified by her being a party to and sealing and delivering these presents,) *Hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, transfer, and set over, unto the said [*trustees*], their executors, administrators,

that the said mortgage debts are still owing, but all interest has been paid;

of an intended marriage, and agreement to assign the mortgage debts;

First witnessing part. Transferror assigns to the trustees the aforesaid mortgage debts.

OF TWO MORTGAGE DEBTS TO TRUSTEES OF A SETTLEMENT.

and assigns, ALL THAT the said debt or sum of , so due and owing from the said [A. B.] to the said [*transferror*], as hereinbefore is mentioned, *And* the interest which shall hereafter become due for the same, *And* the benefit of the covenant or agreement in the said hereinbefore recited indenture of demise contained for payment of the same, AND ALSO all that the said debt or sum of pounds, so due and owing from the said [Y. Z.] to the said [*transferror*], as hereinbefore is mentioned, *And* the interest which shall hereafter become due for the same, *And* the benefit of the covenant or agreement in the said hereinbefore recited indenture of release contained for payment of the same, *And* also the said hereinbefore recited bond or obligation of him the said [Y. Z.], bearing even date with the said last-mentioned indenture, *And* all the right, &c. TO HAVE, HOLD, RECEIVE, AND TAKE the said debts or sums of pounds and pounds, interest, monies, securities, and all other the premises hereby firstly assigned, or intended so to be, and every part thereof, unto the said [*trustees*], their executors, administrators, and assigns, absolutely; *But* nevertheless upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are or shall be expressed and contained of and concerning the same in and by a certain indenture of settlement, bearing, or intending to bear, even date with these presents, and made, or expressed to be made, between the same persons as are parties hereto, and executed, or intended to be executed, at the same time with, or immediately after these presents; AND it is hereby agreed and declared between and by the said parties hereto, that the receipt or receipts in writing of the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, for the said debts or sums, interest, and premises, hereby firstly assigned, or intended so to be, or for any other money payable to them or him by virtue of these presents, shall effectually discharge the person or persons paying the same from being answerable or accountable for the misapplication or nonapplication of the money in such receipt or receipts expressed to have been received, or from being in

Habendum to the trustees absolutely; but upon the trusts declared thereof by an indenture of settlement of even date.

Receipt clause.

anywise obliged to see to the application thereof (*a*); (*Power of attorney from* [*transferror*] *to* [*trustees*], *as ante*, p. 206): AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations hereinbefore expressed, HE the said [*transferror*], with the privity and approbation of the said [*intended wife*], so testified as aforesaid, *Hath* granted, bargained, sold, assigned, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, and set over, unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT and those the said messuage or tenement, and premises, comprised in and demised by the said hereinbefore recited indenture of demise, as aforesaid, *And* all the estate, &c. TO HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereby secondly assigned, or intended so to be, and every part thereof, and their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, from henceforth for and during all the residue and remainder which now is to come and unexpired of the said term of one thousand years, created therein as aforesaid; *But* subject nevertheless to such right and equity of redemption as is now subsisting in the same premises, under or by virtue of the said last-mentioned indenture: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations hereinbefore expressed, HE the said [*transferror*], with the privity and approbation of the said [*intended wife*], (so testified as aforesaid), *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release and confirm, unto the said [*trustees*], (in their actual possession, &c.) and their heirs, ALL THAT and those the said pieces or parcels of land, hereditaments, and premises, comprised in and conveyed by the said hereinbefore recited indentures of lease and release,

OF TWO MORTGAGE DEBTS TO TRUSTEES OF A SETTLEMENT.

Second witnessing part. Transferror assigns to the trustees the premises comprised in the firstly recited mortgage.

Habendum for the residue of the term, but subject to the equity of redemption.

Third witnessing part. Transferror conveys to the trustees the premises comprised in the second recited mortgage.

(*a*) For a recital of a transfer of a mortgage, see Vol. VII, p. 308; and for a declaration of trust of such mortgage, see Vol. VII, p. 131 and 312.

OF TWO MORTGAGE DEBTS TO TRUSTEES OF A SETTLEMENT.

as aforesaid, and their appurtenances, *And* the reversion, &c., *And* all the estate, &c. To HAVE AND TO HOLD the said pieces or parcels of land, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every of them, and every part thereof, and their appurtenances, unto the said [*trustees*] and their heirs, *To the use* of them the said [*trustees*], their heirs and assigns for ever; *But* subject nevertheless to such right and equity of redemption as is now subsisting in the same premises under or by virtue of the said hereinbefore recited indenture of release, and with and subject to the powers, provisoes, agreements, and declarations in the same indenture expressed and contained of and concerning the same; (*Covenant from* [*transferror*] *with the* [*trustees*] *that he hath done no act to incumber, and for further assurance*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the parties hereby appointed and to be appointed, &c. (*Clauses for change of trustees, and indemnity of trustees, as ante*, Vol. VII, pp. 511, 512.) IN WITNESS, &c.

Habendum to the trustees in fee; but subject to the equity of redemption subsisting therein by the said indenture of release, and with and subject to the powers and provisoes therein contained.

OF SEVERAL MORTGAGE AND OTHER DEBTS, TO TRUSTEES.

TRANSFER *or* ASSIGNMENT *of several Mortgage and other Debts, to* TRUSTEES, *for the Immediate Benefit of the Owner's Children.*

THIS INDENTURE, made the day of , BETWEEN [*transferror*], late of , in the county of , but now of , in the same county, gentleman, of the first part; [A. B.] of, &c. of the second part; [C. D.] of, &c., of the third part; [*eldest son*] of, &c. of the fourth part; [*second son*] of, &c. of the fifth part; [*daughter*] of, &c., spinster, of the sixth part; [*one trustee*] of, &c. and [*other trustee*] of, &c., of the seventh part: WHEREAS the said [*transferror*] is possessed of or entitled to the several debts or sums of stock, and money, and securities, hereinafter mentioned (that is to say); FIRSTLY, a debt or sum of pounds three per centum consolidated bank annuities, secured to the said [*transferror*], his executors, administrators, or assigns, by the bond or obligation in writing of [E. F.], of, &c. in the penal sum of pounds, bearing date the day of , together with such sum or sums as shall be equal to the dividends which would hereafter become payable for or in respect of the same annuities, if the same were standing in the name of the said [*transferror*], in the books of the governor and company of the bank of England; SECONDLY, a debt or sum of pounds, of lawful money of Great Britain and Ireland, secured to the said [*transferror*] by the joint and several bond or obligation in writing of [R. B. C.], of, &c. and his father [R. C.], of the same place, Esq., in the penal sum of pounds, bearing date the day of , together with interest on the same sum, after the rate of five pounds for one hundred pounds by the year, from the day of now last past; THIRDLY, a debt or sum of pounds new four pounds per centum

Parties.

Recital that the transferror is possessed of the following debts: *viz.* first, a debt of ——*l.* in the 3 per cents., secured by bond;

secondly, a debt of ——*l.*, sterling, secured by a joint and several bond;

thirdly, a debt of ——*l.* in the

OF SEVERAL MORTGAGE AND OTHER DEBTS, TO TRUSTEES.

annuities, secured to the said [*transferror*], his executors, administrators, and assigns, by a conveyance in fee, by way of mortgage, of divers allotments or enclosures of land, with the messuages and buildings erected and built thereon, situate at in the county of , and the appurtenances, made by [T. L.], of, &c. to the said [*transferror*] by certain indentures of lease and release, bearing date respectively the and days of , and respectively made between the said [T. L.] of the one part, and the said [*transferror*] of the other part, together with such sum or sums of money as shall be equal to the dividends which would hereafter become payable for or in respect of the said last-mentioned annuities, if the same were now standing in the name of the said [*transferror*] in the books of the said governor and company of the bank of England; FOURTHLY, a debt or sum of pounds, of lawful money of Great Britain and Ireland, secured to the said [*transferror*], his executors, administrators, and assigns, by a demise, by way of mortgage, for the term of one thousand years, of two messuages, one malthouse, and several pieces of land, situate at in the county of , made by [T. H.], of, &c. to the said [A. B.], as trustee for the said [*transferror*], by an indenture of demise, bearing date the day of , and made between the said [T. H.] of the first part, the said [*transferror*], of the second part, and the said [A. B.], of the third part, together with interest for the same, after the rate of five pounds for one hundred pounds by the year, from the day of this present month of ; AND FIFTHLY, a debt or sum of pounds of lawful money of Great Britain and Ireland, owing from or by [G. W. C.], of, &c. to the said [*transferror*], and secured by a demise, by way of mortgage, of the small tithes of the vicarage of , and the appurtenances, made by the said [G. W. C.] unto the said [C. D.], as trustee for the said [*transferror*], for the term of years, if he the said [G. W. C.] should so long live, by an indenture bearing date the day of , and made between the said [G. B. C.] of the one part, and the said [*transferror*] of the other part, together with interest for the same, after the rate of five pounds for one hundred pounds by the year,

new 4 per cents., secured by a mortgage in fee;

fourthly, a debt of —— *l.* sterling, secured by a demise, by way of mortgage, for 1000 years;

fifthly, a debt of —— *l.* sterling, secured by a demise of small tithes, by way of mortgage, and an assignment of a policy of assurance;

OF SEVERAL MORTGAGE AND OTHER DEBTS, TO TRUSTEES.

from the day of now last past, which said last mentioned principal sum and interest were further secured by an assignment of a policy of assurance, under the hands of three of the directors of the West of England Insurance Company, bearing date the day of , and numbered , and of a sum of pounds, thereby assured to be paid to the executors, administrators, or assigns of the said [G. W. C.], within sixty days after his death should be proved at the office of the said company, made by the said [G. W. C.] to the said [C. D], as such trustee as aforesaid, by the said last-mentioned indenture (*a*): AND WHEREAS the said [*transferror*] hath agreed, in consideration of the fortune or portion which he received on his marriage with his late wife [Ann], deceased, and in pursuance of a promise made by him to her in her life-time in this behalf, and also in consideration of the natural love and affection which he the said [*transferror*] hath and beareth for and towards the said [*eldest son*], [*second son*], and [*daughter*], (his three children by his said late wife,) to settle the said several debts or sums to which he is so entitled as aforesaid on the said [*eldest son*], [*second son*], and [*daughter*], in manner hereinafter mentioned, and hath requested the said [*trustees*] to become trustees thereof for them, with which request the said trustees have respectively consented and agreed to comply: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and for the reasons and considerations hereinbefore mentioned, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*transferror*] paid, at or immediately, &c. (the receipt &c.) HE the said [*transferror*] *Doth* by these presents grant, bargain, sell, assign, transfer, and set over, unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said debt or sum of pounds three per centum consolidated bank annuities, so due and owing from the said [E. F.], as hereinbefore is mentioned, and all dividends and annual pay-

and that the transferror has agreed to assign the same debts to trustees, for the benefit of his three children by his late wife.

First witnessing part.

Transferror assigns to the trustees

the aforesaid several debts or sums,

(*a*) There were other debts assigned by this deed; but they are omitted here for the sake of brevity.

OF SEVERAL MORTGAGE AND OTHER DEBTS, TO TRUSTEES.

ments now due and hereafter to become due for the same; *And* also all that the said debt or sum of pounds new four per centum annuities, so due and owing from the said [I. L.] as hereinbefore is mentioned, and all dividends and annual payments now due and hereafter to become due for the same; *And* also all those three several debts or sums of pounds, pounds, and pounds, of lawful money of Great Britain and Ireland, so respectively owing, and secured to the said [*transferror*] as hereinbefore is mentioned and recited, and all interest now due and hereafter to become due thereon respectively; *And* also all and singular the bonds, covenants, and personal securities whereby the said debts or sums, or any of them, now are or is secured, *And* all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*transferror*], in, to, out of, or upon the same debts or sums, dividends, interest, monies, securities, and premises, and every or any part thereof,

Habendum to the trustees absolutely; but upon the trusts following; *viz.*

TO HAVE, HOLD, RECEIVE, AND TAKE, the said debts or sums, dividends, interest, monies, securities, and all and singular other the premises hereby firstly assigned, or intended so to be, and every of them, and every part thereof, unto the said [*trustees*], their executors, administrators, and assigns absolutely; *But* nevertheless upon the trusts following (that is to say); *Upon trust* that they the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall forthwith demand, ask for, and receive, of and from the person or persons liable to pay the same respectively, the said debts or sums, dividends, interest, monies, and premises, hereby firstly assigned, or intended so to be, and on non-payment thereof, or of any part thereof respectively, do and shall take, adopt, execute, and perform such measures, proceedings, acts, deeds, matters, and things for recovering and enforcing payment thereof, as they or he shall think expedient or proper, *And* do and shall, with and out of the monies which shall come to their or his hands or hand as aforesaid, in the first place, pay and discharge all the costs, charges, and expenses, which have been incurred or sustained in preparing and perfecting these presents, or in anywise in relation thereto; *And* in the next place, pay,

upon trust to demand payment of the same debts, and on non-payment thereof, to adopt measures for enforcing payment of the same;

and out of the monies arising thereby, to pay the costs of the present deed, and of executing the trusts;

or retain and satisfy all the costs, charges, and expenses, which shall be incurred or sustained in or about receiving or compelling payment of the same monies, or any of them, or in anywise in or about the execution of the trusts hereby created; *And* do and shall pay the surplus or residue of the said monies in manner following (that is to say); as to one equal third part or share thereof, to the said [*eldest son*], his executors, administrators, or assigns; as to another one equal third part or share thereof, to the said [*second son*], his executors, administrators, or assigns; *And* as to the other and remaining one equal third part or share thereof, to such person or persons, for such purpose or purposes, and in such manner as the said daughter shall, notwithstanding her coverture, while under coverture, and whether covert or sole, by any deed or writing under her hand and seal, direct or appoint; *And* in default of such direction or appointment, and subject thereto, to the said [*daughter*], her executors, administrators, or assigns: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations aforesaid, HE the said [*transferror*] *Doth* by these presents bargain, sell, and release, unto the said [*trustees*], (in their actual possession, &c.), and their heirs, ALL, &c. the premises comprised in and conveyed by the said hereinbefore mentioned indentures of lease and release, as aforesaid, and their appurtenances, *And* all the estate, &c. TO HAVE AND TO HOLD the said allotments, inclosures, messuages or tenements, lands, hereditaments, and all and singular other the premises hereby released, or intended so to be, and their appurtenances, unto the said [*trustees*] and their heirs, *To the use* of them the said [*trustees*], their heirs and assigns for ever; *But* subject nevertheless to such right or equity of redemption as is now subsisting in the same premises, under or by virtue of the said hereinbefore mentioned indenture of release: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations aforesaid, (*and for a nominal consideration from the trustees to A. B.*), HE the said [A. B.], at the request and by the direction of the said [*transferror*], (testified, &c.,) *Doth* by these presents bargain, sell, as-

OF SEVERAL MORTGAGE AND OTHER DEBTS, TO TRUSTEES.

and to pay the residue;—as to one-third thereof to the eldest son,—as to one other third thereof, to the second son;

and as to the other one-third thereof, to such persons as the daughter should, whether covert or sole, by deed, &c. appoint;

and, subject to such appointment, to the daughter absolutely.

Second witnessing part. Transferror conveys to the trustees, the premises comprised in the hereinbefore mentioned indentures of lease and release.

Habendum to the trustees in fee, subject to the subsisting equity of redemption.

Third witnessing part. A. B. assigns to the trustees, the premises comprised in the first indenture of demise.

OF SEVERAL MORTGAGE AND OTHER DEBTS, TO TRUSTEES.

sign, and set over, unto the said [*trustees*], their executors, administrators, and assigns, ALL and singular the said messuages, malthouse, lands and premises, comprised in and demised by the said recited indenture of demise of the day of , as hereinbefore is mentioned, *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages, malthouse, lands, and all and singular other the premises hereby secondly assigned, or intended so to be, and every of them, and their appurtenances, unto the said [*trustees*], their executors, administrators, or assigns, as fully and amply as the said [A. B.] could or might have had or held the same, if these presents had not been executed; *But* subject nevertheless to such right and equity of redemption as the same premises are subject to under or by virtue of the said hereinbefore mentioned indenture of the day of : (*Covenant from* [*A. B.*] *that he has done no act to incumber*): AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations aforesaid, (*and a nominal consideration from the trustees to C. D.*), HE the said [C. D.], at the request and by the direction of the said [*transferror*], (testified, &c.), *Doth* by these presents bargain, sell, assign, and set over, unto the said [*trustees*], their executors, administrators, and assigns, ALL and singular the said small tithes, policy, monies, and premises comprised in and demised and assigned by the said recited indenture of the day of , as hereinbefore is mentioned, *And* all the estate, &c. To HAVE AND TO HOLD the said small tithes, policy, monies, and all and singular other the premises hereby thirdly assigned, or intended so to be, and every of them, and their and every of their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, as fully and amply as the said [C. D.] could or might have had or held the same if these presents had not been executed; *But* subject nevertheless to such right and equity of redemption as the same premises are subject to under or by virtue of the said hereinbefore mentioned indenture of the day of ; (*Covenant from C. D. that he has done no act to encumber*): AND the said

Habendum to the trustees as fully as A. B. could have had the same, if these presents had not been executed, but subject to the subsisting right of redemption.

Fourth witnessing part. C. D. assigns to the trustees the tithes, policy, and premises comprised in the second indenture of demise.

Habendum to the trustees as fully as C. D. could have had the same, if these presents had not been executed, but subject to the subsisting right of redemption.

Power of attorney from the

OF SEVERAL MORTGAGE AND OTHER DEBTS, TO TRUSTEES.

[*transferror*] *Doth* hereby appoint the said [*trustees*], and the survivor of them, and their and his executors, administrators, and assigns, the true and lawful attorney and attornies of him the said [*transferror*], for him and in his name, or in the name or names of his executors or administrators, but at the expense of the trust premises, to call in, demand, sue for, recover, and receive the several and respective debts or sums, dividends, and interest hereinbefore mentioned, or any of them, or any part thereof, and on payment thereof, or of any part thereof, to give and sign receipts and discharges for the same; *And* in case of the non-payment of the whole, or any part of the said debts or sums, dividends, and interest, or any of them, to enter into any agreement or composition respecting the same, or any or either of them, and instead of the whole to take a part of the same respectively, and generally to do, execute, and assent to all such acts, deeds, matters, and things respecting the said premises as to the said [*trustees*], or the survivor of them, or their or his executors, administrators, or assigns, shall seem meet; *And* for all or any of the purposes to appoint one or more attorney or attornies under them or him, and at pleasure to revoke such appointment from time to time, as they or he shall think fit; *And* whatsoever the said [*trustees*], or the survivor of them, or their or his executors, administrators, or assigns, or any attorney or attornies to be appointed under them, or any of them, shall lawfully do or cause to be done by virtue of these presents, the said [*transferror*] doth hereby agree to allow, ratify, and confirm; AND the said [*transferror*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, in manner following (that is to say); that the said debts or sums, dividends, interest, and other monies hereinbefore assigned, are due and owing on the securities hereinbefore mentioned, and have not been in any manner released, charged, assigned, or incumbered; *And* that he the said [*transferror*], his executors or administrators, shall not nor will, at any time hereafter, revoke or make void the powers or authorities hereinbefore given or contained, or release or discharge the said debts or sums hereby assign-

transferror to the trustees, to get in the debts, &c.

Covenant from transferror with the trustees not to release the debts or revoke the aforesaid powers, and for further assurance.

OF SEVERAL MORTGAGE AND OTHER DEBTS, TO TRUSTEES.

ed, or intended so to be, or any of them, or release, disavow, discontinue, or discharge, any action, suit, judgment, or execution, which shall or may be brought, prosecuted, or obtained for or on account of the same debts or sums, or any of them, or any part thereof, without the previous consent in writing of the said [*trustees*], their executors, administrators, or assigns, or some of them, or the rule, order, or decree of some court of law or of equity; *And* lastly, that he the said [*transferror*], his executors and administrators, and all persons whomsoever, claiming or to claim, by, from, through, or in trust for them, or any of them, shall and will, at the request of the said [*trustees*], their executors, administrators, and assigns, but at the expense of the said trust premises, make, do, and perfect all such further assignments, assurances, acts, and deeds, as may be necessary or thought expedient for the more effectually and satisfactorily assigning and assuring of the said debts or sums, dividends, interest, monies, securities, and premises hereby assigned, or intended so to be, and every or any of them, unto the said [*trustees*], their executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*trustees*], their executors, administrators, or assigns, or their or any of their counsel in the law, shall be devised and tendered to be executed, or be otherwise reasonably required. IN WITNESS, &c.

TRANSFER *of a* MORTGAGE DEBT *of Pounds, and of a* TERM *of Years, created in the Mortgaged Premises, for securing it; and* CONVEYANCE *of the* FEE SIMPLE *in Remainder, expectant on the Determination of the Term of and in the same Premises, to* TRUSTEES *for the Transferree of the Mortgage Debt, for securing that Debt, and also a further Sum, advanced by the Transferree to the Devisees in Trust and Executors of the Mortgagor, for the Preferment in the World of one of the Children of the Mortgagor, under a* POWER *to raise Money for* ADVANCEMENT, *contained in the Will of the Mortgagor.*

OF A MORTGAGE DEBT, AND TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

THIS INDENTURE, made the day of , BETWEEN [*transferror*] of, &c. esquire, of the first part; [*one devisee in trust and executor of mortgagor*] of, &c. [*other devisee in trust and executor of mortgagor*] of, &c. of the second part; [*transferree*] of, &c. of the third part; and [A. B.] of, &c. and [C. D.] of, &c. of the fourth part: WHEREAS by an indenture of demise, bearing date the day of , and made or expressed to be made between [*mortgagor*] therein described of the one part, and [*mortgagee*] of, &c. gent. of the other part; ALL that messuage or tenement, or dwelling house, with the brewhouse, malthouse, buildings, and appurtenances thereunto belonging, situate and being, &c. (*parcels*), were (in consideration of the sum of pounds, by the said [*mortgagee*] to the said [*mortgagor*] paid, as in the said indenture is mentioned) granted and demised by the said [*mortgagor*] unto the said [*mortgagee*], his executors, administrators, and assigns, for the term of years, to be computed from the day next before the day of the date of the said indenture; but subject ne-

Parties.

Recites an indenture of demise, by way of mortgage for securing the sum of —*l.* and interest.

OF A MORTGAGE DEBT, AND TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

vertheless to a proviso or condition in the same indenture contained, for redemption of the said premises, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same after the rate of five pounds for one hundred pounds by the year, on the day of , then next ensuing, which said sum and interest were not then paid; AND WHEREAS by an indenture of assignment, bearing date the day of , and made between the said [*mortgagee*], of the first part, the said [*mortgagor*], of the second part, and the said [*transferror*], of the third part; the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises, comprised in and demised by the said hereinbefore recited indenture as aforesaid, and their appurtenances, were, (in consideration of the sum of pounds to the said [*mortgagee*], and of the sum of pounds to the said [*mortgagor*], respectively paid by the said [*transferror*], as in the said indenture now in recital is mentioned) assigned by the said [*mortgagee*], and assigned and confirmed by the said [*mortgagor*] unto the said [*transferror*], his executors, administrators, and assigns, for all the then residue of the said term of years, freed and discharged from the proviso for redemption, in the said lastly hereinbefore recited indenture contained; but subject nevertheless to a proviso or condition in the said indenture now in recital contained, for redemption of the said premises, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*transferror*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same after the rate of five pounds for one hundred by the year, on the day of then next ensuing, which said sum and interest were not then paid; AND WHEREAS by an indenture bearing date the day of , and made or expressed to be made between the said [*mortgagor*], of the one part, and the said [*transferror*], of the other part, the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises comprised in and assigned by the said lastly

An indenture of assignment, whereby the mortgage is transferred to another person.

An indenture of further charge;

recited indenture as aforesaid, and their appurtenances were, (in consideration of the sum of pounds, to the said [*mortgagor*], by the said [*transferror*] paid, as in the said indenture now in recital is mentioned), charged by the said [*mortgagor*] with the payment to the said [*transferror*], his executors, administrators, or assigns, of the further sum of pounds, with interest for the same after the rate of five pounds for one hundred pounds by the year, on the day of , then next ensuing, which said sum and interest were not then paid; AND WHEREAS on the day of , the said [*mortgagor*] paid to the said [*transferror*] the sum of pounds, in satisfaction and discharge of the principal monies and interest then due and owing on the security of the said lastly hereinbefore recited indenture, as appears by a receipt or acknowledgment to that effect, under the hand of the said [*transferror*], endorsed on the said last mentioned indenture, and as he the said [*transferror*] doth hereby admit and declare; AND WHEREAS the said [*mortgagor*] did by his last will and testament in writing, bearing date on or about the day of , and so executed and attested as by law is required for passing freehold estates by devise, give, devise, and bequeath unto his wife [A. P.], and his brother [G. T.], and his friends [X. Y.] and [Y. Z.], in his said will respectively described, all his messuages, tenements, hereditaments, and real estate whatsoever and wheresoever, situate and being, and of what nature or kind soever, and also all his goods, chattels, monies, and securities for money, and all other his personal estate whatsoever, and of what nature or kind soever; *To hold* the said real and personal estate and premises, unto and to the use of the said [A. T.], [G. T.], [X. Y.], and [Y. Z.], their heirs, executors, and administrators, according to the nature or quality thereof respectively; *Upon trust*, to permit and suffer, and sufficiently authorize and empower, his (the said testator's) said wife, the said [A. T.], and her assigns, to have, receive, and take, the rents, issues, profits, interest, dividends, and proceeds thereof respectively, to her and their own use and benefit, during so long time as she should remain and continue his widow, and from and after

OF A MORTGAGE DEBT, AND TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

the payment by mortgagor of the sum secured by the further charge;

the will of the mortgagor;

OF A MORTGAGE DEBT, AND TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

the decease or marriage of his said wife (whichever should first happen), *Upon trust*, to sell, dispose of, and convert into money, either by public or private sale, all and singular, his said real and personal estate, so given, devised, and bequeathed to his said trustees, as aforesaid, either together or in parcels, as to them should seem best, and to put and place out the money arising thereby at interest on government, real, or other good security or securities, and to stand possessed of the same, upon the trusts in the said will mentioned and declared, for the benefit of his children; *And* the said testator by his said will declared, that it should be lawful for his said trustees, or the survivors or survivor of them, his executors or administrators, after the decease or marriage of his said wife, or during her widowhood, with her consent in writing, to apply and dispose of the therein and hereinbefore mentioned trust-monies, or any part thereof, for and in order to the preferment and advancement in the world of all or any of his child or children, by placing him, her, or them, out apprentice or otherwise, in such manner, for his, her, or their benefit, as they or he, his said trustees or trustee, should think fit; so as the same did not exceed the share in the aforesaid trust-monies of the child for whose benefit the same should be so advanced; *And* the said testator did by his said will declare, that it should be lawful for his said trustees, and the survivors and survivor of them, and the heirs or assigns of such survivor, if they, he, or she, should find or think it expedient so to do, to raise by mortgage of his said real estate, or any part thereof, prior to the sale of the same, all such sum and sums of money as should be charged thereon at the time of his decease, and which it should be necessary to pay off, and also all such sum and sums of money (if any) as it should be found expedient to raise, for the advancement of his said children or any of them, or for paying and discharging the costs and expenses of or attending such mortgage or mortgages; *And* the said testator did by his said will declare, that it should be lawful for his said wife to carry on the brewing business in which he was then engaged, for the benefit of herself and her children, so long as she should remain his widow, and think proper to carry on the same; *And* the said testator

OF A MORTGAGE DEBT, AND TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

did by his said will declare, that in case his said wife should at any time during her widowhood, not be desirous to carry on the said business, and his said trustees, or the survivors or survivor of them should then think it fit and most for the benefit of her and her children, to sell and dispose of all or any part of his said real and personal estate, he did thereby authorise and empower them the said trustees, or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, so to do; and the monies arising from such sale or sales, to place out at interest, as in the said will is mentioned, upon the trusts thereinbefore declared concerning the same; *And* the said testator did by his said will declare, that for facili tating the sale, mortgage, or getting in of his said real and personal estates, or any part thereof, in pursuance of that his said will, the receipt or receipts of his said trustees, or of the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, for any money payable to them, him, or her, by virtue of his said will, should be a good and sufficient discharge, or good and sufficient discharges, for so much money as in such receipt or receipts should be acknowledged to be received; *And* the said testator did by his said will, authorise and empower his said trustees, or the survivors or survivor of them, and the executors or administrators of such survivor, to alter and vary the security or securities in or upon which the said trust monies or any part thereof should be invested, as they or he should from time to time think fit; *And* the said testator did by his said will, constitute and appoint the said [A. T.], [G. T.], [X. Y.], and [Y. Z.], joint executors and trustees of his said will, and guardians of his said children; AND WHEREAS some time in or about the year , the said [*mortgagor*] discontinued the brewing business in which he was engaged at the time of making his said will, and wholly retired from trade; AND WHEREAS the said [*mortgagor*] did by a codicil to his said will, bearing date on or about the day of , 182 , and so executed and attested as by law is required for passing real estate by devise, revoke and make void every devise, bequest, power, authority, and provision whatsoever, devised, bequeathed, or given, by his said will, to the said

The retirement of the mortgagor from trade, in the month of ——, 18 ;

A codicil to the will of the mortgagor.

OF A MORTGAGE DEBT, AND TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

[A. T.], [G. T.], [X. Y.], and [Y. Z.], as trustees and executors, for the purposes therein mentioned; *And* in lieu thereof, did by his said codicil devise and bequeath to the said [A. T.], [G. T.], and [E. F.], therein described, and his the said testator's sons, the said [*devisees in trust and executors*], their heirs, executors, administrators, and assigns, all the real and personal estate and effects whatsoever, which by his said will were devised and bequeathed to the said [A. T.], [G. T.], [X. Y.], and [Y. Z.], as therein and hereinbefore is mentioned, *To hold* the same, unto and to the use of the said [A. T.], [G. T.], and [E. F.], [*devisees in trust and executors*], their heirs, executors, administrators, and assigns, for the like estates and interests, as were by his said will devised and bequeathed to the said [A. T.], [G. T.], [X. Y], and [Y. Z.]; *And* the said testator did by his said codicil declare, that all the provisions whatsoever, necessary or expedient for executing the trusts which were contained in his said will, with reference to the said [A. T.], [G. T.], [X. Y.], and [Y. Z.], should be extended, and were thereby extended to the said [A. T.], [G. T.], [E. F.], and [*devisees in trust and executors*], and generally that his said will should thereafter operate and enure in all respects whatsoever, in like manner as if the said [A. T.], [G. T.], [E. F.], and [*devisees in trust and executors*], had been named trustees and executors in and throughout the same will; *And* the said testator did by his said codicil, nominate and appoint the said [A. T.], [G. T.], [E. F.], and [*devisees in trust and executors*], executors and trustees of his said will, and guardians of his said children; AND WHEREAS the said [*mortgagor*] departed this life on the day of , 182 ; without having altered or revoked his said will, except so far as the same was altered or revoked by his said codicil, and without having altered or revoked his said codicil; AND WHEREAS by a deed poll, or instrument in writing, under the hands and seals of the said [G. T.], and [E. F.], bearing date the day of , now last past, the said [G. T.] and [E. F.] did severally renounce, and for ever disclaim, all and singular the real and personal estates and effects whatsoever, which by the said codicil of the said [*mortgagor*], were given and bequeathed to the said

The death of the mortgagor, without having altered his will, except by his codicil, and without having altered his codicil.

A deed of disclaimer by three of the trustees, and executors of the real and personal estate, devised and bequeathed by

OF A MORTGAGE DEBT, AND TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

[A. T.], [G. T.], [E. F.], and [*devisees in trust and executors*], their heirs, executors, administrators, and assigns, *In trust* as aforesaid, and all estate, right, title, and interest whatsoever therein or thereto, under the said will and codicil, or either of them, and all the trusts, powers, and authorities whatsoever reposed or vested in them the said [A. T.], [G. T.], [E. F.], and [*devisees in trust and executors*], under or by virtue of the same will and codicil, or either of them; AND WHEREAS on the day of , now last past, the said hereinbefore recited will and codicil of the said [*mortgagor*] were duly proved by the said [A. T.] and [*devisees in trust and executors*], in the court of ; AND WHEREAS the said [A. T.] departed this life on or about the day of (*a*). AND WHEREAS there is now due to the said [*transferror*], upon or by virtue of the said hereinbefore recited indenture of the day of , 182 , the principal sum of only, all interest for the same having been fully paid and discharged up to the day of the date of these presents, as he the said [*transferror*] doth hereby admit and acknowledge: AND WHEREAS the said [*transferror*], having occasion for the said sum of pounds,

the will and codicil of the testator;

the probate of the will and codicil of the mortgagor by the two other devisees in trust, and executors;

that the sum of —*l.*, secured by the indenture of the day of , is now due, but all interest has been duly paid;

that the transferror hath applied for payment of it;

(*a*) When this precedent was first prepared, the widow was living. She was accordingly made to join in the conveyance, to release her dower, as well as to convey her interest as one of the devisees in trust; and the following recital immediately preceded the first witnessing part:

" AND WHEREAS the said [A. T.] is barred or prevented in equity from claiming dower in or out of the messuage or tenement, brewhouse, malthouse, buildings, hereditaments and premises hereinbefore mentioned, by an agreement contained in her marriage settlement, to accept the provision thereby made for her in lieu and satisfaction of her dower; but inasmuch as she is at law entitled to dower in or out of the said premises, it was, on the treaty with the said [*transferree*] expressly agreed, that she should release her dower therein in manner hereinafter mentioned;"

Agreement by widow to release her dower.

OF A MORTGAGE DEBT, AND TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM

hath applied to the said [*devisees in trust and executors*], as such executors as aforesaid, for the payment thereof; AND WHEREAS it hath been ascertained, that the personal estate and effects of the said [*mortgagor*] will not, after payment of his funeral and testamentary expenses, be sufficient to pay and discharge all his debts, exclusively of the said mortgage debt or sum of pounds, so due to the said [*transferror*] as aforesaid; AND WHEREAS the said [*devisees in trust and executors*], as such trustees as aforesaid, are desirous of raising, under the power or authority for that purpose contained in the said will of the said [*mortgagor*] as aforesaid, the sum of pounds, for placing [F. T.], the youngest son of the said [*mortgagor*], an apprentice to [ ], of, &c. chemist, such sum being less than the present value of the expectant share of the said [F. T.], in the real and personal estate and effects devised and bequeathed by the said will of the said [*mortgagor*] as aforesaid, after payment of his debts and funeral and testamentary expenses; AND WHEREAS the said [*devisees in trust and executors*] being unable immediately to sell for a proper and adequate price or sum the messuage or tenements, brewhouse, malthouse, buildings, hereditaments, and premises hereinbefore mentioned, and so comprised in the said mortgage, to the said [*transferror*] as aforesaid, and their appurtenances, have requested the said [*transferree*] to lend them the sum of pounds, for the purpose of paying off the said mortgage, and of apprenticing the said [F. T.] as aforesaid, with which request the said [*transferree*] hath agreed to comply, on having the repayment of the same sum, with interest thereon after the rate of five pounds for one hundred pounds by the year, secured by the assignment or transfer and conveyance hereinafter respectively contained, and by the joint and several covenant of the said [*devisees in trust and executors*] hereinafter also contained (*b*):

that the personal estate of the mortgagor will be insufficient to pay his debts, exclusively of the mortgage debt;

that the devisees in trust and executors, were desirous of raising, under a power contained in the will of mortgagor, a sum of ——*l.*, for apprenticing his youngest son to a chemist;

that the devisees in trust and executors, being unable immediately to sell the premises, had applied to transferree to lend them the sum of —*l.* to pay off the transferror, and to apprentice F.T. which he has agreed to do, on having the same secured, with interest, by the assignment, conveyance, and covenants hereinafter contained.

(*b*) In general, trustees cannot be expected to make themselves answerable for the money they may raise under a power to mortgage;

OF A MORTGAGE DEBT, AND OF A TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, at or immediately before the sealing and delivery of these presents, to the said [*transferror*] in hand well and truly paid, at the request and by the direction of the said [*devisees in trust and executors*], testified by their respectively being parties to, and sealing and delivering these presents, (the receipt of which said sum of pounds, the said [*transferror*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge, the said [*transferree*], his heirs, executors, and administrators,) HE the said [*transferror*], at the request and by the direction of the said [*devisees in trust and executors*], (testified in manner hereinbefore mentioned), *Doth*, by these presents grant, bargain, sell, assign, transfer, and set over, unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT the said debt or sum of pounds, which is now due and owing to the said [*transferror*], on the security of the said hereinbefore recited indenture of the day of , 182 , as aforesaid, *And* the interest which shall from henceforth become due for or in respect of the same, *And* all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*transferror*], in, to, out of, or upon, the same debt or sum, and interest, and every part thereof (*c*), *Together* with full power and authority to and for the said [*transferree*], his executors, administrators, or assigns, in his or their own name or names, or in the name or names of the said [*transferror*], his executors or administrators, to demand, sue for, re-

First witnessing part. Transferror assigns his mortgage debt, or sum of —*l.* and the interest henceforth to become due for the same,

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but in this case they agreed to do so, being sons of the testator, and brothers of the party intended to be advanced, and the party who advanced the money having refused to lend it, without their personal covenant.

(*c*) Sometimes, instead of this short form, a power of attorney is introduced at greater length, immediately after the habendum, in the assignment of the debt. See *ante*, p. 205, 231.

OF A MORTGAGE DEBT, AND OF A TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

cover, and receive, and give effectual releases or other discharges for the said debt or sum of pounds, and interest, hereby firstly assigned, or intended so to be, or any part thereof; To HAVE, HOLD, RECEIVE, AND TAKE, the said debt or sum of pounds, and interest, and all and singular other the premises hereby firstly assigned, or intended so to be, and every part thereof, unto the said [*transferree*], his executors, administrators, and assigns, for his and their own absolute use and benefit: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the consideration hereinbefore expressed, HE the said [*transferror*], at the request, and by the direction of the said [*devisees in trust and executors*], (so testified as aforesaid,) *Doth* by these presents, bargain, sell, assign, transfer, and set over, unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT and those the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises, hereinbefore particularly mentioned and described, and so comprised in and demised by the said hereinbefore recited indenture of the day of , as aforesaid, and their appurtenances; *And* all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*transferror*], in, to, out of, or upon the same premises, and every or any part thereof: To HAVE AND TO HOLD the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and all and singular other the premises hereby secondly assigned, or intended so to be, and their and every of their appurtenances, unto the said [*transferree*], his executors, administrators, and assigns, for all the residue and remainder, which is now to come, and unexpired, of the said term of years, created therein by the said last mentioned indenture, as aforesaid; *But* subject nevertheless, to such right, title, and equity of redemption, as is now subsisting in the said hereditaments and premises, under or by virtue of the same indenture; AND the said [*transferror*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT and declare, with and to the said [*transferree*], his executors, administrators, and assigns, and also with

unto transferree absolutely.

Second witnessing part.

Transferror assigns the premises comprised in the mortgage term.

To transferree for the remainder of the term, subject to the subsisting right of redemption.

Covenant from the transferror, that he has done no act to

and to the said [*devisees in trust and executors*], and each of them, and their and each of their executors and administrators, that he the said [*transferror*], hath not at any time or times heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof, the said debt or sum, interest, and premises, hereby firstly assigned, or intended so to be, or any part thereof, or the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises, hereby secondly assigned, or intended so to be, or any part thereof, or the said term of years, created in the said last mentioned premises, as aforesaid, are, is, shall, or may be in anywise impeached, charged, released, discharged, assigned, surrendered, affected, or incumbered: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of pounds, by the said [*transferree*] to the said [*transferror*] so paid, as hereinbefore is mentioned and recited; *And* also in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*transferree*], to the said [*devisees in trust and executors*], in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the payment and receipt of which said sums of pounds, and pounds, in manner hereinbefore mentioned (making together the sum of pounds), the said [*devisees in trust and executors*], do hereby respectively admit and acknowledge, and of and from the same and every part thereof, doth hereby acquit, release, and for ever discharge the said [*transferree*], his executors, administrators, and assigns), and also in consideration of the sum of ten shilings, of like lawful money, by the said [A. B.], and [C. D.], to the said [*devisees in trust and executors*], paid at, &c. (the receipt whereof, &c.) THEY the said [*devisees in trust and executors*], according to their estate, right, title, interest, power, and authority, under or by virtue of the said recited codicil of the said [*mortgagor*], or either of them, and so far as they can or may, at law or in equity, but not further, or otherwise; and at the request, and upon the nomina-

OF A MORTGAGE DEBT, AND OF A TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

incumber the debt or mortgaged premises.

Third witnessing part.

The devisees in trust and executors convey the fee-simple of the mortgaged premises

OF A MORTGAGE DEBT, AND OF A TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

tion of the said [*transferree*], (testified by his being a party to, and sealing and delivering these presents), *Do*, and each of them *Doth*, by these presents, bargain, sell, and release, unto the said [A. B.], and [C. D.], (in their actual possession, &c. *reference to a lease for a year*), and their heirs, ALL that and those the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises, hereinbefore described, and so comprised in and demised by the said hereinbefore recited indenture of the day of , as aforesaid, and their and every of their appurtenances, *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of the same messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises, and of every part thereof, *And* all the estate, right, title, interest, inheritance, use, trust, property, possession, equity of redemption, claim, and demand whatsoever, both at law and in equity, of them the said [*devisees in trust and executors*], and each of them, in, to, out of, or upon, the same hereditaments and premises, and every part thereof, To HAVE AND TO HOLD the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and all and singular other the premises hereby released, or intended so to be, and every part thereof, and their and every of their appurtenances, (subject and without prejudice to the said mortgage debt, or sum of pounds, and interest, hereinbefore assigned, or intended so to be, and to the said term of years, created by the said last mentioned indenture for securing the same as aforesaid,) unto the said [A. B.], and [C. D.], and their heirs, *To the use* of them the said [A.B.] and [C. D.], their heirs and assigns for ever, *In trust* for the said [*transferree*], his executors, administrators, and assigns, but nevertheless under and subject to the provisoes, agreements, and declarations, hereinafter expressed and contained of and concerning the same: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said [*devisees in trust and executors*], or either of them, or their or either of their heirs, executors, or administrators, shall and do on the day of , which will be in the year 182 , well and truly pay or cause to be paid, unto the said [*transferree*],

unto A. B. and C. D., their heirs and assigns, subject to the aforesaid mortgage, and to the provisoes after contained.

Proviso for redemption and reconveyance of the fee, and for assignment or surrender of the term, on payment of the mortgage-debt, and of the further sum of

his executors, administrators, or assigns, the said debt or sum of pounds, hereinbefore assigned, or intended so to be, and also the further sum of pounds, of like lawful money of Great Britain and Ireland, *And* shall and do in the mean time, well and truly pay or cause to be paid unto the said [*transferree*], his executors, administrators, and assigns, interest for the same sums respectively, after the rate of five pounds for one hundred pounds by the year, by two equal half yearly payments, on the day of , and the day of , in the same year, *And* shall and do make the said several payments without any deduction or abatement whatsoever out of the same, or any of them, for or in respect of any present or future taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever; *Then*, and in such case, and at any time thereafter, they the said [A. B.], and [C. D.], or the survivor of them, or the heirs or assigns of such survivor, shall and will, at the request and expense of the said [*devisees in trust and executors*], their heirs or assigns, re-convey the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises, hereby released, or intended so to be, and their appurtenances, unto and to the use of the said [*devisees in trust and executors*], their heirs and assigns, *Upon* the trusts declared and contained, concerning the same, in and by the said recited will and codicil of the said [*mortgagor*] as aforesaid, or any of them, and the said [*transferree*], his executors, administrators, or assigns, shall and will, at the like request and expense, re-assign the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises hereby assigned, or intended so to be, and their appurtenances, unto the said [*devisees in trust and executors*], their heirs and assigns, or to such person or persons as they shall in that behalf order and direct, for the then residue of the said term of years, created therein as aforesaid, so that the said term may be merged and extinguished in, or wait upon and attend the reversion, freehold, and inheritance of the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises, and their appurtenances, as the said [*devisees in trust*

OF A MORTGAGE DEBT, AND OF A TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

—*l.* with interest.

OF A MORTGAGE DEBT, AND OF A TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

and executors], their heirs or assigns, shall think proper and direct, free from all charges and incumbrances whatsoever, made, done, or committed by the said [A. B.] or [C. D.], or either of them, or their or either of their heirs or assigns, or by the said [*transferree*], his executors, administrators, or assigns, or any of them, so as for the doing thereof they the said [A. B.] and [C. D.], or either of them, their, or either of their heirs or assigns, or the said [*transferree*], his executors, administrators, or assigns, or any of them, be not compelled or compellable to go or travel from their or any of their usual places or place of abode or dwelling: PROVIDED ALWAYS and it is hereby further agreed and declared between and by the said parties hereto, that in the meantime, and until default shall be made in payment of the said sums of pounds, and pounds, or either of them, or the interest thereof, or any part thereof respectively, contrary to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, it shall and may be lawful to and for the said [*devisees in trust and executors*], their heirs and assigns, peaceably and quietly to have, hold, occupy, possess, and enjoy the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises hereby respectively assigned and released, or intended so to be, and their appurtenances, and to receive and take the rents, issues, and profits thereof, without any let, suit, trouble, interruption, disturbance, claim, or demand whatsoever, of, from, or by the said [*transferree*], his executors, administrators, or assigns, or the said [A. B.] and [C. D.], their heirs or assigns, or any of them, or any person or persons whomsoever, claiming or to claim, by, from, through or under, or in trust for him, them, or any of them (*d*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the

Proviso for quiet enjoyment by the mortgagor, until default.

Provision for keeping the messuage or

(*d*) It appears from a note in the margin of the draft, that it was considered doubtful whether the devisees in trust could so far delegate the trust reposed in them by the will as to confer a power of *sale;* and that the property was deemed sufficiently valuable to make the additional security afforded by such a power unnecessary.

OF A MORTGAGE DEBT, AND OF A TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

said parties hereto, that while any monies shall remain due and owing on the security of these presents, the said [*devisees in trust and executors*], their heirs, executors, administrators, and assigns, shall and will insure, and keep insured, the said messuage or tenement, brewhouse, malthouse, and other buildings hereby respectively assigned and released, or intended so to be, in the name or names of the said [*transferree*], his executors, administrators, or assigns, in the Sun Insurance Office, London, or in some other respectable office or offices of insurance in London or Westminster, against loss or damage by fire, in the sum of pounds at the least; *And* that if he or they shall at any time neglect or refuse so to do, or (on being thereunto requested) to produce and shew forth to the said [*transferree*], his executors, administrators, or assigns, the policy or policies by which such insurance shall be effected, together with the receipt or receipts, or other vouchers given for the premium or premiums payable thereon, *Then* and in such case it shall be lawful for the said [*transferree*], his executors, administrators, or assigns, to insure and keep insured the same messuage or tenement, brewhouse, malthouse, and other buildings, in such name or names, and office or offices as aforesaid, in any sum or sums of money he or they shall think fit, not exceeding in the whole the sum of pounds, and to advance and pay all such sum and sums of money as shall be necessary for that purpose; *And* that the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises, hereby respectively assigned and released, or intended so to be, and their appurtenances, shall be and remain a security as well for the sum or sums of money which shall be so from time to time advanced and paid as last aforesaid, with interest for the same, after the rate of five pounds for one hundred pounds by the year, to be computed from the time or respective times of advancing and paying the same, as for the said sum of pounds and interest hereby secured as aforesaid; *And* that the monies (if any) which shall be received or recovered under or by virtue of the policy or policies by which the said premises shall be so insured as aforesaid, shall, at the option of the said [*transferree*], his executors, ad-

tenement, brewhouse, malthouse, and other buildings, insured against loss or damage by fire during the continuance of the security.

OF A MORTGAGE DEBT, AND OF A TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

ministrators, or assigns, be applied, either in or towards substantially rebuilding, reinstating, and repairing the premises which shall, for the time being, be destroyed or damaged by fire as aforesaid, or in or towards paying and satisfying the principal monies and interest for the time being remaining due and owing, on the security of these presents; *And* the surplus thereof (if any) shall in either case be paid to the said [*devisees in trust and executors*], their executors, administrators, or assigns, as such trustees and executors as aforesaid; AND each of them the said [*devisees in trust and executors*], so far as relates to his own acts and deeds only, but not further or otherwise, doth hereby for himself, his heirs, executors, and administrators, COVENANT and declare with and to the said [*transferree*], his executors, administrators, and assigns, and also with and to the said [A. B.] and [C. D.], their heirs and assigns, that they the said [*devisees in trust and executors*] have not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof the said messuage or tenement, brewhouse, malthouse, buildings, hereditaments, and premises hereby released, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be in anywise impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever (*e*).

Covenant from the devisees in trust and executors, that they have done no act to incumber the premises.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of pounds, and pounds, so respectively paid by the said [*transferree*] to the said [*devisees in trust and executors*], as hereinbefore is mentioned (*f*), THEY the said [*devisees in trust and executors*] do hereby jointly for themselves, their heirs, executors, and administrators, and each of them doth hereby separately for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and

Fourth witnessing part. Joint and several covenants from the devisees in trust and executors, for payment of the sums of —*l.* and —*l.* and interest.

(*e*) No covenants for title were inserted, the mortgagors being merely devisees in trust, and the cestuis que trust being children.

(*f*) See note, *ante*, p. 240.

to the said [*transferree*], his executors, administrators, and assigns, that they the said [*devisees in trust and executors*], or some or one of them, or their, or some or one of their heirs, executors, and administrators, shall and will well and truly pay or cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, the sums of pounds, and pounds, hereby secured as aforesaid, and the interest thereof respectively, on or at the days or times, and in manner, in the aforesaid proviso or agreement mentioned or appointed for payment of the same respectively, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents. IN WITNESS, &c.

OF A MORTGAGE DEBT, AND OF A TERM OF YEARS, AND CONVEYANCE OF THE FEE FOR SECURING A FURTHER SUM.

TRANSFER *of a Mortgage Debt, or Sum of Pounds, and of the Interest thereof, and of the Securities for the same, To a Third Party, for securing by way of* MORTGAGE, *a lesser Sum and Interest.*

OF A MORTGAGE FOR SECURING A LESSER SUM BY WAY OF MORTGAGE.

THIS INDENTURE, made the day of 18 , between [*mortgagee*] of, &c. of the one part; and [*transferree*] of, &c. of the other part; WHEREAS by indentures of lease and release, bearing date respectively the and days of , and made or expressed to be made between [J. S.] therein described, of the one part; and the said [*mortgagee*], of the other part; the closes or pieces or parcels of land or ground, hereditaments, and premises hereinafter described, and intended to be hereby released, and their appurtenances, were (in consideration of the sum of pounds, by the said [*mortgagee*] to the said [J. S.] paid, as in the said indenture of release is mentioned), conveyed by the said [J. S.] unto and to the use of the said [*mortgagee*], his heirs and assigns for ever, but subject nevertheless to a proviso, &c. (*for redemption, &c. as*

Parties.

Recital of a mortgage in fee;

OF A MORTGAGE FOR SECURING A LESSER SUM BY WAY OF MORTGAGE.

ante, p. 203.) *And* by the said indenture of release, the said [J. S.] did (amongst other things) covenant with the said [*mortgagee*], his executors, administrators, and assigns, that he the said [J. S.], his heirs, executors, administrators, and assigns, would pay to the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, with interest for the same after the rate of five pounds for one hundred pounds by the year, on or at the days or times, and in the manner mentioned in the proviso, or condition for payment of the same thereinbefore contained;

and that the mortgagor thereby entered into a covenant for payment of the debt;

AND WHEREAS the sum of pounds, so secured by the said hereinbefore recited indentures as aforesaid, is still due and owing, together with an arrear of interest thereon, from the day of now last past, as he the said [*mortgagee*] doth hereby testify and declare;

that the sum secured by the above mortgage is still due and owing, with interest from the day of ,

AND WHEREAS the said [*mortgagee*], having occasion for the sum of pounds, hath applied to the said [*transferree*], to lend him the same, which he hath consented and agreed to do, upon having the repayment thereof, with interest for the same after the rate of five pounds for one hundred pounds by the year, secured at the times and in manner hereinafter expressed, by the covenant of the said [*mortgagee*], hereinafter for that purpose contained, and by a transfer or assignment by way of mortgage, of the said debt or sum of pounds and interest, secured by the said hereinbefore recited indentures as aforesaid, and of the securities for the same:

and the transferree hath agreed to lend the mortgagee the sum of —*l.* on the security of his covenant, and of a transfer by way of mortgage, of the above debt or sum of —*l.*, and the securities for the same;

First witnessing part.

NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds of, &c. by the said [*transferree*], to the said [*mortgagee*], in hand well and truly paid, at or immediately before the sealing and delivering of these presents, (the receipt of which sum of pounds, the said [*mortgagee*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*transferree*], his heirs, executors, administrators, and assigns);

Mortgagee, in consideration of ——*l.* paid to him by transferree, covenants with transferree

HE the said [*mortgagee*], doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*transferree*], his executors, administrators, and assigns, that he the said [*mortgagee*], his heirs, executors, administrators, or as-

for the payment to him of the sum of —*l.* with interest, on the day of ,

signs, shall and will on the day of now next ensuing, well and truly pay, or cause to be paid to the said [*transferree*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, together with interest for the same after the rate of five pounds for one hundred pounds by the year, to be computed from the day of the date of these presents, without making any deduction or abatement out of the same or any part thereof, for or on account of any present or future taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of pounds so paid by the said [*transferree*] to the said [*mortgagee*], as hereinbefore is mentioned; HE the said [*mortgagee*] *Hath* bargained, sold, assigned, transferred, and set over; and by these presents *Doth* bargain, sell, assign, transfer, and set over unto the said [*transferree*], his executors, administrators, and assigns, ALL that the said debt or sum of pounds of lawful money of Great Britain and Ireland, which is now due and owing to him the said [*mortgagee*], on the security of the said hereinbefore recited indentures as aforesaid, and all the interest due and to become due for the same, and all the benefit or advantage of the covenant or agreement in the said indenture of release contained for the payment of the same sum and interest as aforesaid, *And* all powers or remedies given to or vested in him the said [*mortgagee*], for recovering and enforcing payment of the said sum of pounds, or the interest thereof, *And* all the right, title, interest, &c.; TO HAVE HOLD, RECEIVE, AND TAKE the said debt or sum of pounds, interest, covenant, agreement, and all and singular other the premises hereby assigned, or intended so to be, unto and by the said [*transferree*], his executors, administrators, and assigns, for his and their own use and benefit; *But* subject nevertheless to the proviso or condition hereinafter contained for redemption of the same premises; (*Power of attorney from* [*mortgagee*] *to* [*transferree*], *to demand or enforce payment of the said sum and interest hereby assigned, &c. as ante, p.* 205, 231): AND THIS IN-

OF A MORTGAGE FOR SECURING A LESSER SUM BY WAY OF MORTGAGE.

free from any deductions.

Second witnessing part.

Mortgagee assigns mortgage debt or sum of —*l.*,

to transferree, his executors, administrators, or assigns absolutely, but subject to redemption, as after-mentioned.

OF A MORTGAGE FOR SECURING A LESSER SUM BY WAY OF MORTGAGE.

DENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration, (*&c. as ante, p.* 243); HE the said [*mortgagee*], *Hath* granted, bargained, sold, released, and confirmed, and by these presents *Doth* grant, bargain, sell, release, and confirm unto the said [*transferree*], (in his actual possession, &c.) and his heirs; ALL, &c. (*Parcels fully, as they are described in the mortgage deed*); Together with, &c. (*general words*) *And* the reversion, &c. *And* all the estate, &c.: TO HAVE AND TO HOLD the said closes or pieces or parcels of land or ground, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part thereof, and their and every of their appurtenances, unto and to the use of the said [*transferree*], his heirs and assigns for ever; *But* subject nevertheless to such right, title, or equity of redemption as is now subsisting in or upon the same premises, under or by virtue of the said hereinbefore recited indenture of release, *And* also subject to the proviso or consideration hereinafter contained, for redemption of the same premises (that is to say); PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall and do truly pay, or cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain and Ireland, together with interest for the same after the rate aforesaid, on or at the day or time, and in manner hereinbefore mentioned and appointed for the payment thereof, without any deduction or abatement, and according to the true intent and meaning of the covenant and agreement hereinbefore for that purpose contained, and these presents; *Then* and in such case, and at any time thereafter, he the said [*transferree*], his executors, administrators, or assigns, shall and will, at the request, and costs and charges of the said [*mortgagee*], his executors, administrators, or assigns, re-assign and assure the said debt or sum of pounds, interest, and premises hereby assigned, or intended so to be, unto the said [*mortgagee*], his executors, administrators, and assigns, or as he or they shall in that behalf order and direct; and the said [*transferree*],

Third witnessing part.

Mortgagee conveys to transferree.

Habendum in fee,

subject to the equity of redemption subsisting under or by virtue of the hereinbefore recited indenture of release, and to the proviso for redemption hereinafter contained.

Proviso for reassignment of the debt, and reconveyance of the mortgaged premises, on payment to the transferree of the sum of —*l.* and interest, on the day of .

his heirs or assigns, shall and will, at the request, and costs and charges of the said [*mortgagee*], his heirs, executors, administrators, or assigns, reconvey and assure the said closes, or pieces or parcels of land or ground, hereditaments, and premises hereby granted and released, or intended so to be, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, or as he or they shall in that behalf order or direct, subject nevertheless to the right, title, or equity of redemption which shall be then subsisting in the said premises, under or by virtue of the said hereinbefore recited indenture of release, but free from all incumbrances whatsoever made, done, or committed by the said [*transferree*], his heirs, executors, administrators, or assigns, so as for the doing thereof, he or they, or any of them, be not compelled or compellable to go or travel from his, her, or their usual place or places of abode or dwelling (*a*); AND the said [*mortgagee*], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*transferree*], his heirs, executors, administrators, and assigns, in manner following, (that is to say); that the said debt or sum, and interest, hereby assigned, or intended so to be, are now due and owing on the securities hereinbefore mentioned, and that he the said [*mortgagee*] is now lawfully, rightfully, and absolutely entitled to the same sum and interest, and every part thereof, for his own use and benefit, and that he the said [*mortgagee*] is now seised of, or well entitled to the said closes, pieces, or parcels of land or ground, hereditaments and premises, hereby granted and released, or intended so to be, and their appurtenances, for a good, sure, and absolute estate of inheritance in fee simple in possession, free from incumbrances, but subject nevertheless to such right, title, and equity of redemption as is subsisting in the same premises, under or by virtue of the said hereinbefore recited indenture of release as

OF A MORTGAGE FOR SECURING A LESSER SUM BY WAY OF MORTGAGE.

Covenants by the mortgagee with the transferree, that the mortgage debt is owing, and that mortgagee is entitled to the same;

that he is seised in fee of the lands in mortgage, subject to the equity of redemption subsisting under the mortgage;

(*a*) A power to sell the mortgage debt which is assigned, and the benefit of the securities given for the same, is sometimes inserted in this place. For a form of such power, see title "MORTGAGES," and *Index*, "POWER OF SALE."

OF A MORTGAGE FOR SECURING A LESSER SUM BY WAY OF MORTGAGE.

aforesaid; *And further*, that he the said [*mortgagee*] now hath in himself good right, full power, and lawful and absolute authority, to assign and assure the said debt or sum, and interest, hereby assigned, or intended so to be, unto the said [*transferree*], his executors, administrators, and assigns, and to convey and assure the said closes, or pieces, or parcels of land or ground, hereditaments and premises, hereby granted and released, or intended so to be, and their appurtenances, unto, and to the use of the said [*transferree*], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And also* that if the said sum of pounds and interest, hereby secured, or any part thereof respectively, shall not be paid conformably to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, *Then* and in such case, and at any time hereafter, it shall and may be lawful to and for the said [*transferree*], his executors, administrators, and assigns, to receive and take the said debt or sum of pounds, interest, and premises hereby assigned, or intended so to be, and to enter into or upon, and to have, hold, possess, and enjoy the said closes, or pieces, or parcels of land or ground, hereditaments, and premises, hereby granted and released, or intended so to be, or any of them, or any part thereof, and to receive and take the rents, issues, and profits thereof, and of every part thereof, without any let, suit, trouble, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagee*], his heirs, executors, administrators, or assigns, or any of them, or any other person or persons whomsoever; *And* that free and clear, and freed and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [*mortgagee*], his heirs, executors, or administrators, well and sufficiently saved, protected, kept harmless, and indemnified, of, from, and against all, and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, leases, mortgages, uses, trusts, wills, intails, annuities, rent-charges, rents-seck and arrears of rent, fines, issues, amerciaments, statutes, recognizances, judgments, executions, extents, seizures, sequestrations, and all other estates, titles, troubles, charges,

that he has good right to assign the debt and convey the premises;

for quiet enjoyment after default;

for freedom from incumbrances,

debts, and incumbrances whatsoever; *And* moreover, that if the said sum of pounds and interest, hereby secured, or any part thereof respectively, shall not be paid conformably to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, *Then* and in such case he the said [*mortgagee*], and his heirs, executors, and administrators, and all and every other persons and person whosoever, having, or lawfully or equitably claiming, or who shall or may hereafter have, or lawfully or equitably claim, any estate, right, title, or interest, in, to, or out of the said debt or sum, interest and premises, hereby assigned, or intended so to be, or any part thereof, or the said closes, or pieces or parcels of land or ground, hereditaments, and premises hereby granted and released, or intended so to be, or any of them, or any part thereof, shall and will, from time to time, and at all times thereafter, upon the request of the said [*transferree*], and his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*mortgagee*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, things, assignments, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely assigning and assuring the said debt or sum, interest and premises, hereby assigned, or intended so to be, unto the said [*transferree*], his executors, administrators, and assigns, and for granting, conveying, and assuring the said closes or pieces or parcels of land or ground, hereditaments, and premises hereby granted and released, or intended so to be, and their appurtenances, unto and to the use of the said [*transferree*], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*transferree*], his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised, or required. IN WITNESS, &c.

OF A MORTGAGE FOR SECURING A LESSER SUM BY WAY OF MORTGAGE.

and for further assurance.

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

RELEASE *in* FEE *of an Estate by Trustees for Sale to a* PURCHASER, *to Uses to bar Dower; and* TRANSFER *of several Debts or Sums secured on the Estate by way of Mortgage and Further Charge, and of a Term of Years created by the Mortgage;* TO *the* INTENT *that the Mortgage Debts and Term of Years may attend the* INHERITANCE, *and protect the same from Mesne Incumbrances.

Parties.

THIS INDENTURE, made the day of , BETWEEN [*one trustee for sale*] of, &c. and [*other trustee for sale*] of, &c. of the first part; [*transferror*] of, &c. of the second part; [*purchaser*] of, &c. of the third part; [*trustee to bar dower*] of, &c. of the fourth part; and [*transferree*] of, &c. of the fifth part; WHEREAS by an

Recital of a mortgage by demise.

indenture of demise by way of mortgage, bearing date on or about the day of , and made, or expressed to be made, between [*mortgagor*], therein described, of the one part, and [*mortgagee*], therein described, of the other part; the messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and their appurtenances, were, (in consideration of the sum of three thousand pounds by the said [*mortgagee*] to the said [*mortgagor*] paid, as in the said indenture is mentioned,) demised by the said [*mortgagor*] unto the said [*mortgagee*], his executors, administrators, and assigns, for and during the term of one thousand years, to be computed from the day of the date of the said indenture, and thenceforth next ensuing, and fully to be complete and ended; *But* subject nevertheless to a proviso, &c. (*for redemption, on payment of three thousand pounds, with interest, as* ante, *p.* 209); *And* in the said indenture was contained a covenant, &c. (*for payment, &c. as in p.* 209); AND WHEREAS by an

A deed of further charge.

indenture, bearing date on or about the day of , and made, or expressed to be made, between the said [*mortgagor*] of the one part, and the said [*mortgagee*] of the other part, the messuages or tenements, lands, hereditaments, and premises comprised in and demised by the said hereinbefore recited indenture as aforesaid, and their appurtenances, were (in consideration of the sum of five hundred pounds by the said [*mortgagee*] to the said [*mortgagor*] paid, as in the said indenture now in recital is mentioned) charged by the said [*mortgagor*] with the payment to the said [*mortgagee*], his executors, administrators, or assigns, of the further sum of five hundred pounds, with interest for the same after the rate of five pounds for one hundred pounds by the year, to be computed from the day of the date of the said indenture now in recital, on the day of then next, (*recites a second deed of further charge for three hundred pounds*); AND WHEREAS the said [*mortgagor*] did, in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date on or about the day of , and thereby, after directing that his just debts and funeral and testamentary expenses should be paid with all convenient speed after his decease, gave, devised, and bequeathed all his real and personal estate whatsoever and wheresoever, unto and to the use of the said [*trustees for sale*], their heirs, executors, administrators, and assigns, according to the nature and quality of the said estates respectively; *Upon trust* nevertheless that they the said [*trustees for sale*], or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, should forthwith sell, dispose of, collect, and get in the same, or otherwise convert the same into money, and should, with and out of the monies which should arise thereby, in the first place pay and discharge the costs and expenses which should be incurred in carrying the said trusts into execution, and in the next place, pay and satisfy his, the said testator's, just debts and funeral and testamentary expenses, and the several legacies given by his said will, or which should be given by any codicil or codicils thereto; *And* should lay out and invest the surplus or residue of the said monies

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

Will of the mortgagor.

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

in their or his own names or name in the parliamentary stocks or public funds of Great Britain, or upon government security or real security in England or Wales; *And* should stand and be possessed of and interested in the trust-monies so to be laid out as aforesaid, and the stocks, funds, and securities in or upon which the same should be invested, and the interest, dividends, and annual produce thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations in the said will expressed and contained of and concerning the same, in favor or for the benefit of his two daughters, [E.], the wife of [X. Y.], and [S.], the wife of [Y. Z.], and their respective children; *And* the said testator by his said will declared, that the receipt or receipts in writing of the said [*trustees for sale*], or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, for any monies which should be payable to them or him by virtue of his said will, should discharge the person or persons paying the same, from being answerable or accountable for the misapplication or non-application of the monies in such receipt or receipts expressed or acknowledged to be received, or from being in anywise obliged to see to the application thereof; *And* the said testator by his said will appointed the said [*trustees for sale*] to be his executors; AND WHEREAS the said [*mortgagor*] departed this life on or about the day of , without having altered or revoked his said will, and on or about the day of the same will was duly proved in the court of ; AND WHEREAS the said [*trustees for sale*], as such trustees and executors as aforesaid, did, soon after the decease of the said [*mortgagor*], possess themselves of his personal estate and effects, and convert into money such part thereof as did not then consist of money, and did thereout pay and discharge the funeral and testamentary expenses of the said [*mortgagor*], and a considerable part of his just debts; AND WHEREAS the said [*mortgagee*], having called in and required payment of the said debts, or sums of three thousand pounds, five hundred pounds, and three hundred pounds, respectively secured by the said hereinbefore recited indentures of the day of , the day of

Death of mortgagee and probate of his will.

That the executors had possessed themselves of the personal estate, and applied it in payment of debts;

that the mortgagee having called in the mortgage debts, and the trustees and executors having no fund out of which to pay the same;

, and the day of , as aforesaid, and of the interest then due and in arrear for the same, and having threatened to foreclose the equity of redemption subsisting under or by virtue of the said indentures, unless the said debts or sums and interest were forthwith paid; *And* the said [*trustees for sale*], being unable immediately to sell and dispose of the said messuages or tenements, lands, hereditaments, and premises, comprised in the said indentures, and so devised by the will of the said [*mortgagor*] as hereinbefore is mentioned, and being possessed of no other fund wherewith or whereout to pay and discharge the same debts or sums and interest; the said [*transferror*] did, in or about the month of 18 , at the request of the said [*trustees for sale*], agree to advance and pay to the said [*mortgagee*] the sum of four thousand and sixteen pounds, (being the amount of the principal monies and interest which were then due on the security of the said hereinbefore recited indentures as aforesaid,) and to accept and take from the said [*mortgagee*] an assignment or transfer of the said mortgage debts, or sums of three thousand pounds, five hundred pounds, and three hundred pounds, and of the interest then due for or in respect thereof, (amounting to the sum of two hundred and sixteen pounds,) and of the securities for the same respectively; such transfer or assignment to be as a temporary arrangement only until a suitable purchaser for the said mortgage premises could be found: *And* accordingly, by an indenture of assignment, bearing date on or about the day of , and made or expressed to be made between the said [*mortgagee*], of the first part; the said [*trustees for sale*], of the second part; and the said [*transferror*], of the third part; the said [*mortgagee*] did, (in consideration of the sum of four thousand and sixteen pounds to him paid by the said [*transferror*] as in the said indenture now in recital is mentioned) assign and transfer unto the said [*transferror*], his executors, administrators, and assigns, *All those* the said mortgage debts, or sums of three thousand pounds, five hundred pounds, and three hundred pounds, respectively secured by the said recited indentures of the day of , the day of , and the day of , as hereinbefore is

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

the transferror agreed to advance money to pay off the mortgages, and to take a transfer of them;

that by an indenture of assignment bearing date, &c. the mortgages were transferred to transferror accordingly;

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

mentioned, together with the interest which was then due, and which should thereafter become due for or in respect of the same; *To hold* the said debts or sums, interest, and premises, thereby firstly assigned, and every of them, unto the said [*transferror*], his executors, administrators, and assigns, for his and their own absolute use and benefit; *And* by the said indenture now in recital, the said [*mortgagee*] did, for the considerations thereinbefore expressed, assign and transfer unto the said [*transferror*], his executors, administrators, and assigns, *All those* the said messuages or tenements, lands, hereditaments, and premises, comprised in and demised by the said therein and hereinbefore recited indenture of the day of as aforesaid, and their appurtenances; *To hold* the said messuages or tenements, lands, hereditaments, and premises, thereby lastly assigned, and their appurtenances, unto the said [*transferror*], his executors, administrators, and assigns, for all the then residue and remainder of the said term of one thousand years, created therein by the said last-mentioned indenture as aforesaid, but subject nevertheless to the right, title, and equity of redemption which was subsisting in the said premises, on payment of the said mortgage debts or sums, and interest, thereinbefore assigned as aforesaid; AND WHEREAS the said [*trustees for sale*] have, in pursuance and execution of the trust for that purpose declared and contained in the said recited will of the said [*mortgagor*] as aforesaid, contracted and agreed with the said [*purchaser*], for the absolute sale to him of the said messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and so comprised in, and demised by, the said hereinbefore recited indenture of the day of , as aforesaid, and their appurtenances, and the inheritance thereof in fee-simple in possession, free from incumbrances, at or for the price or sum of five thousand pounds; AND WHEREAS the said debts or sums and interest, so assigned or transferred to the said [*transferror*] by the said lastly hereinbefore recited indenture as aforesaid, still remain due and owing, together with the interest which hath since become due in respect of the same, and which now amounts to the sum of one hun-

that the trustees for sale have contracted with a purchaser for the sale of the premises, at —*l.*;

dred and four pounds (making in the whole the sum of four thousand one hundred and twenty pounds), as they the said [*trustees for sale*], and [*transferror*], do hereby respectively admit and declare; AND WHEREAS it hath been agreed, that the said sum of four thousand one hundred and twenty pounds, so due and owing to the said [*transferror*] as aforesaid, should be paid by and out of the purchase money or sum of five thousand pounds, so agreed to be paid by the said [*purchaser*] as aforesaid, and that the remainder of the said purchase money or sum of five thousand pounds should be paid to the said [*trustees for sale*], and that the said mortgage debts or sums of three thousand pounds, five hundred pounds, and three hundred pounds, and the interest now due for the same, should be kept on foot (*a*), as subsisting charges on the said messuages or tenements,

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

that there is now due to the transferror, for principal and interest, —*l.*;

that it has been agreed, that out of the purchase-money —*l.* should be paid to the transferror, and the remainder to the trustees for sale;

that the in-

(*a*) As stated before, mortgages are frequently kept on foot, and assigned to a trustee for a subsequent mortgagee, or purchaser, as a protection against mesne incumbrances, and to secure priority. In reference to this practice, there are two recent important cases which it would be improper not to notice. The first is, *Toulmin* v. *Steere*, 3 Merivale, 210. The circumstances of this case were shortly these: In May 1805, Ann Simpson purchased of Richard Witts an annuity of 180*l.* for three lives, and the life of the survivor, in consideration of 2000*l.* The annuity was granted and secured in the usual form, on an estate belonging to Witts, but which was in mortgage to one Harrison, for securing 5000*l.* The mortgage was in fee, and expressly excepted in the annuity deed. The annuity deed contained the usual covenants for further assurance, and for enabling Witts to repurchase the annuity. M. N. Daniel acted as solicitor for both parties, and duly received and paid the annuity till he quitted the country, as after mentioned. In August 1807, Ann Simpson intermarried with B. Holme, and previously thereto, the annuity was duly assigned to the plaintiff Toulmin and T. B. Simpson, upon certain trusts. In 1806, one Wilby lent Witts 3000*l.*, on a second mortgage of the above estate, and afterwards got in by a transfer, the mortgage made to Harrison. In March 1810, Witts sold the estate to the trustees of the will of Lee Steere, who purchased it under the authority of the Court of Chancery, and it was duly conveyed to the uses of the will, under which uses, Lee Steere Steere was tenant for life in possession, with remainder to his son, an infant, as tenant in tail. The mortgages for 5000*l.* and 3000*l.*, were paid off out of the

Important cases as to keeping old securities on foot.

Toulmin v. *Steere.*

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and so agreed to be purchased by the said [*purchaser*] as aforesaid, and their appurtenances; *And* that the same debts or sums, and interest, and the said term of one thousand

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cumbrances should be kept on foot and assigned to a trustee;

purchase money, and Wilby joined in the purchase deed, and conveyed the legal estate to the uses of the will. William Haydon and M. N. Daniel were the trustees of the will.

In 1812 Daniel became embarrassed, and quitted the country. Soon afterwards, a bill was filed by Toulmin and Simpson, and Mr. and Mrs. Holme, against Lee Steere Steere and his infant son, and against Haydon and Daniel, the trustees under the above purchase deed. The bill charged notice of the annuity granted to Miss Simpson, afterwards Mrs. Holme, and prayed a declaration that it was a charge on the lands purchased by the defendants, in preference to the mortgages, and also an account and payment of the arrears; and in case the court should think the defendants had a right to set up the mortgages, or either of them, in bar of the annuity, it prayed that the plaintiffs might be at liberty to redeem the mortgages; and that, on such redemption, the legal estate might be conveyed to the plaintiffs to secure their annuity. It was admitted by the answers of the defendants, and proved by evidence, that Daniel acted in the sale and purchase of the estate, as agent and solicitor, as well for Witts the seller, as for the purchasers. It was understood, that the defendants had no actual notice of the annuity, and that Witts the vendor had left in Daniel's hands sufficient money to redeem it, but that Daniel had converted the money to his own use.

It was argued for the plaintiffs, by Mr. Bell, Mr. Heald, and Mr. Hodgson, that the defendants were not entitled to set up the mortgages at all;—that if Witts had payed off the first mortgage, he would have been bound to convey or charge the legal estate for securing the annuity, and that, any one claiming through him with notice of the annuity, stood in the same situation;—that Daniel, one of the defendants, clearly had such notice, and that the other defendants, by employing Daniel as their agent in the purchase, had also such notice;—that the defendants, by paying off the mortgages, had let in the annuity as the first incumbrance on the estate;—that it might have been different, if the defendants had first taken a *bona fide* transfer of the mortgages, and afterwards purchased the equitable estate, but it was clear from the mode which had been adopted, that there was no intention to keep the mortgages alive as distinct interests in the estate;—and that the plaintiffs

years, created in the said hereditaments and premises for securing the same, as hereinbefore is mentioned, should be assigned to the said [*transferree*], his executors, administrators, and assigns, upon and for the said trusts, intents,

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

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were clearly entitled to relief in equity. On the part of the defendants, it was argued by Sir Samuel Romilly, Mr. Roupell, and Mr Sugden, that the purchase by the defendants, having been sanctioned by the decree of the court, Daniel was to be considered as the agent of the court, rather than of the defendants;—that, assuming Daniel to be the agent of the parties, notice to him could not, at all events, bind the *infant* defendant;—that although, by the mode of conveyance adopted on the purchase, there had been a confusion of the legal and equitable estates, yet that there had been no merger of the mortgages, since equity always keeps incumbrances alive, or considers them extinguished, as will best serve the purposes of justice;—and that in the present case, there would be no difficulty in the court separating the interests, although by the form of conveyance adopted they had been thrown together.

The Master of the Rolls held, that Daniel had complete and continued notice of the existence of the annuity, and that such actual notice to him was constructive notice to those on whose account the purchase was made;—that the infant defendant was equally affected with and bound by such notice;—and that the circumstance of the estate being purchased under the direction of the court, did not affect the rights of third parties, as the Court of Chancery in employing its officer to investigate the title of estates, did not thereby warrant them.

In reference to the point more particularly in question, he proceeded as follows: "If the annuity is to be considered as an incumbrance on this estate, in the hands of the present owners, the next consideration is, in what order it is to be paid. The charges that preceded it have ceased to exist. They are all paid off and extinguished. The plaintiff contends that the annuity is now to be considered as the sole charge affecting the estate. The defendants say, it is only to be paid in the order in which it originally stood, and that the purchasers must be considered as the owners of the antecedent charges, and entitled to retain, in the first place, so much as would be sufficient to keep down the interest of them. Supposing Witts himself had paid off all the other incumbrances, the annuitant would have stood in the same situation as if he had been from the beginning the sole incumbrancer. He could not have said, 'I will retain for myself so much of the rents and profits as would have been required to keep down the interest of the other charges, and you must take your chance of there being enough left to pay you your

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

and purposes hereinafter expressed concerning the same; *And* that the fee-simple and inheritance of the same messuages or tenements, lands, hereditaments, and premises, should be conveyed and assured to the uses hereinafter

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and that the fee should be limited to the uses, &c.

annuity.' In effect, Witts has paid off the other incumbrances; for they have been paid out of the purchase money, and he has received so much less for his estate, than he otherwise would have done. Then, what equity can the purchasers have, to consider them as still subsisting, as against any person claiming under Witts? They are in no worse situation than they would have been if they had bought an estate on which there was no mortgage, but which turned out to be incumbered with an annuity not known to them in fact, but constructively known to them by means of notice to their agent. In that case, would they be permitted to say, there was a time when there was a charge upon the estate prior to the annuity, and, therefore, as between the annuitant and us, that charge shall be considered as still existing? The cases of *Greswold* v. *Marsham*, 2 Cha. Ca. 170, and *Mocatta* v. *Murgatroyd*, 1 P. Wms. 393, are express authorities to shew that one purchasing an equity of redemption, cannot set up a prior mortgage of his own, nor consequently a mortgage which he has got in, against subsequent incumbrances of which he had notice. I do not see how I can make any distinction in point of legal effect, between personal notice to the party, and notice affecting him through the medium of his agent. I think the plaintiff is entitled to the first relief prayed by the bill, and ought not to be put to the necessity of redeeming the incumbrances, which may at one time have been prior to the annuity."

Parry v *Wright.*

The other case is *Parry* v. *Wright* and others, 1 Sim. and Stu. 369; in which it was held, that if a third incumbrancer, having constructive notice of the second mortgage, fails, on paying off the first security, to keep it on foot for his protection, he is not entitled to stand in the place of the first mortgagee as against the second. In this case, Griffith Parry, being seised in fee of an estate, subject to a mortgage for 3,220*l.*, then vested in Sir Thomas Mostyn, executed a second mortgage of it to the plaintiff, T. P. J. Parry, for securing 203*l.* 11*s.* 6*d.*, and interest. He then sold the estate to one Madocks, and conveyed the same to him accordingly, but subject to the mortgages to Sir T. Mostyn, and the plaintiff, which were therein recited. Soon afterwards, by an indenture of release made between Sir T. Mostyn of the first part, Madocks of the second part, and Girdlestone of the third part, and grounded on a lease for a year, Sir T. Mostyn, in consideration of 3,220*l.*, mentioned to be paid to him by Madocks, in full satisfaction of his mortgage, conveyed the premises, by the direction of Madocks, to Girdle-

limited and declared: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of four thousand one

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

First witnessing part.

stone in fee, but no trust was declared by the deed of the fee. By an indenture of even date with, and executed immediately after the above conveyance, Madocks, in consideration of 3,220*l.*, paid to Sir T. Mostyn, by H. C. Berkley, one of the defendants, as the agent of Henry Wright, another of the defendants, and of the sum of 1,780*l.*, paid to him by Berkley as Wright's agent, granted an annuity to Wright of 500*l.* a year, to be issuing out of the estate purchased by Madocks of G. Parry; and Girdlestone, by the direction of Madocks, demised the same premises to Berkley for a term of 500 years, upon trust for securing the said annuity. The plaintiff not having been paid the principal and interest secured by his mortgage, filed his bill against Wright, G. Parry, Madocks, and Berkley, insisting that Wright had notice of his mortgage by the conveyance from G. Parry to Madocks, in which it was recited, and that he knew that Madocks had not paid off his (the plaintiff's) incumbrance, and that the 3,220*l.* which was paid by Wright, in discharge of Sir T. Mostyn's mortgage, was in fact a payment on behalf of Madocks, and that thereby the plaintiff became the first incumbrancer on the premises, and he accordingly prayed a foreclosure against the defendants in the usual terms. Wright, by his answer, denied that he had any actual notice of the plaintiff's charge, but admitted that the assignment of Sir T. Mostyn's securities, and the conveyance from G. Parry to Madocks, were recited in his annuity deed, but that the conveyance to Madocks was recited without any express reference to the plaintiff's mortgage, and submitted that he ought not to be considered as having notice of that mortgage.

The case was argued by Mr. Bell and Mr. Koe for Parry, the plaintiff, and by Mr. Heald, Mr. Sugden, and Sir George Hampson for Wright, the principal defendant. It was ably contended by the defendant's counsel, that as the conveyance from Sir T. Mostyn to Girdlestone was executed at the same time as the annuity to Wright was granted, and as the money paid to Sir T. Mostyn was Wright's money, and as the conveyance to Girdlestone contained no declaration of trust in favour of Madocks, Girdlestone ought to be considered as Wright's trustee, to the extent of the annuity, and that there was no equity for the plaintiff to come in between Madocks and Wright, and say that Sir T. Mostyn's mortgage was paid off for his (the plaintiff's) benefit.

The Vice-Chancellor, in delivering judgment, said:

"When the money of the defendant Wright was applied in satisfac-

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

hundred and twenty pounds (*b*), of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*transferror*] in hand well and truly paid, at or immediately before the sealing and delivering of these presents, at the request and by the direction of the said [*trustees for sale*], testified by their being parties to and executing these presents, (the receipt of which said sum of four

The trustees for sale, in consideration of

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tion of the mortgage debt due to Sir Thomas Mostyn, the parties might have made an arrangement which would have kept Sir Thomas Mostyn's security on foot as against the plaintiff T. P. J. Parry. If they have failed to do this, no court can give an effect to their instruments contrary to their own clear and express intention. I agree that it is of no consequence that the grant of the annuity, and the redemption of Sir Thomas Mostyn's mortgage, are split into two instruments, and that the whole is to be considered as one transaction. Mr. Wright, who was actually, though not constructively, ignorant of the existence of the plaintiff's mortgage, agrees to give Mr. Madocks 5,000*l.* for the purchase of an annuity, upon condition that 3,220*l.*, part of the sum, is applied in redemption of the mortgage to Sir Thomas Mostyn, which he seems to have considered as the only incumbrance upon the estate. The money is accordingly paid to Sir Thomas Mostyn, and the fee of the estate is vested in Girdlestone, in trust for Mr. Madocks, and then, out of this fee, Mr. Girdlestone grants, by the direction of Mr. Madocks, a term of five hundred years, to Mr. Berkley, as a trustee for Mr. Wright, for the purpose of securing his annuity. How then can Mr. Wright, who accepts this term of five hundred years from Mr. Girdlestone, as a trustee of the fee for Mr. Madocks, contend that it was not the true intention of this transaction that Mr. Girdlestone should hold the fee in trust for Mr. Madocks? If it were the true intention of this transaction, that the fee conveyed by Sir Thomas Mostyn, should vest in Mr. Girdlestone as trustee for Mr. Madocks, the consequence is unavoidable, that neither Mr. Madocks, nor any person claiming under him, with notice of the plaintiff's mortgage, can ever set up this fee against the title of the plaintiffs; and it is not denied that Mr. Wright had constructive notice of the plaintiff's mortgage. The plaintiff, therefore, is to be considered as the first incumbrancer upon this estate; and is entitled to a decree accordingly."

(*b*) Sometimes it is advisable to state the payment of the purchase-money by way of recital; this is more usually done in cases where the purchase-money is paid to several persons in different sums. For forms of such recitals, See Vol. VI. p. 342.

thousand one hundred and twenty pounds, the said [*transferror*] doth hereby admit and acknowledge,) *And* also in consideration of the sum of eight hundred and eighty pounds, of like lawful money, by the said [*purchaser*] to the said [*trustees for sale*], in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt of which said sum of eight hundred and eighty pounds, and the payment of the said sum of four thousand one hundred and twenty pounds, making together the sum of five thousand pounds, the said [*trustees for sale*], do hereby admit and acknowledge, and declare the same to be in full satisfaction for the absolute purchase of the said messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and their appurtenances, and the fee-simple and inheritance thereof, and of and from the same sums, and every part thereof respectively, the said [*trustees for sale*], do hereby respectively acquit, release, and for ever discharge the said [*purchaser*], his heirs, executors, administrators and assigns), THEY the said [*trustees for sale*], according to their estate, right, and interest, under and by virtue of the said hereinbefore recited will of the said [*mortgagor*], and so far as they can or may at law or in equity, but not further or otherwise, *Have*, and each of them, *Hath* granted, bargained, sold, released and confirmed, and by these presents *Do*, and each of them *Doth* grant, bargain, sell, release, and confirm unto the said [*purchaser*], (in his actual possession, &c., and his heirs, ALL THAT messuage, &c., (*parcels*), *And* the reversion, &c., *And* all the estate, &c: TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances (subject and without prejudice to the said mortgage debts or sums of three thousand pounds, five hundred pounds, and three hundred pounds respectively secured by the said hereinbefore recited indentures of the day of , the day of , and the day of , as aforesaid, and the interest now due, for or on account of the same respectively; *And* also to the said term of one thousand

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

—*l.* to transferror, and —*l.* to them paid by purchaser,

convey to purchaser.

Parcels.

Habendum (subject to the mortgages and term) to purchaser in fee, to uses to bar dower.

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

years, created in the said premises for securing the same sums and interest, as hereinbefore is mentioned, and which said debts or sums, interest, and term of years, are hereinafter respectively assigned or intended so to be), unto the said [*purchaser*], and his heirs, To the uses following (that is to say); *To the use* of such person or persons, &c. (*usual uses to bar dower, see* Vol. VI, p.276.) (*Covenant by* [*trustees for sale*], *that they have done no act to incumber* (*c*).)

Second witnessing part.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and

Transferror assigns to transferree

in consideration of the premises, and also in consideration of the said sum of four thousand one hundred and twenty pounds, so paid by the said [*purchaser*] to the said [*transferror*], as hereinbefore is mentioned and recited, and also in consideration of the sum of ten shillings of like lawful money, by the said [*transferree*] to the said [*transferror*] paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HE, the said [*transferror*], at the request and by the direction of the said [*trustees for sale*], and upon the nomination of the said [*purchaser*], (testified by their respectively being parties to, and executing these presents,) *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, transfer, and set over unto the said [*transferree*],

the said mortgage debts and interest.

his executors, administrators, and assigns, ALL THOSE the said mortgage debts or sums of three thousand pounds, five hundred pounds, and three hundred pounds, respectively secured by the said recited indentures of the day of , the day of , and the day of as hereinbefore is mentioned: *And* also the interest which is now due for or on account of the same respectively, and which now amounts to the sum of three hundred and twenty pounds as aforesaid; *And* also all interest which shall hereafter

(*c*) There were no covenants for title, as the persons beneficially interested in the excess of the purchase-money over the mortgage-debts, were married women and infants, as appears from the recital of the will.

become due for or on account of the same debts or sums, or any of them; *And* all the right, &c.; To HAVE, HOLD, RECEIVE, AND TAKE the said debts or sums, interest, and all and singular other the premises hereby firstly assigned, or intended so to be, and every part thereof, unto the said [*transferree*], his executors, administrators, and assigns absolutely; *But* nevertheless upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same: AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, HE the said [*transferror*], at the request, and by the direction of the said [*trustees for sale*], (so testified as aforesaid,) *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, transfer, and set over unto the said [*transferree*], his executors, administrators, and assigns, ALL THOSE the said messuages or tenements, lands, hereditaments, and premises hereinbefore described, and granted and released, or intended so to be, and so comprised in and demised by the said hereinbefore recited indenture of the day of as aforesaid, and their appurtenances; *And* all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*transferror*], in, to, out of, or upon the same premises, and every part thereof, To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby lastly assigned, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [*transferree*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of one thousand years created therein by the said last mentioned indenture as aforesaid; *But* subject to such right, title, and equity of redemption as is now subsisting in the same premises under or by virtue of the said lastly hereinbefore recited indenture, or the indentures therein and hereinbefore recited, on payment of the said mortgage debts or sums and interest hereinbefore assigned, or intended so to be; *But* nevertheless upon and for the trusts, intents, and purposes

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

Habendum to transferree absolutely, but upon trusts after mentioned.

Third witnessing part.

Transferror assigns to transferree,

the messuages and premises before conveyed.

Habendum to transferree for the residue of the term, subject to the subsisting right of redemption.

but upon the trusts after declared.

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

hereinafter expressed and declared of and concerning the same premises; *And it is hereby agreed and declared* between and by the said parties to these presents, that the said [*transferree*], his executors, administrators, and assigns, shall henceforth stand and be possessed of and interested in the said mortgage debts or sums and interest hereby firstly assigned, or intended so to be, and every of them; *And* also (but subject to such right, title, and equity of redemption as hereinbefore is mentioned) of and in the said messuages or tenements, lands, hereditaments, and premises hereby secondly assigned, or intended so to be, and their appurtenances, for all the residue of the said term of one thousand years created therein as aforesaid; *Upon trust* for the said [*purchaser*], his heirs, executors, administrators, and assigns, and to assign and dispose of the same respectively as he or they shall in that behalf order or direct; *And* in the mean time, *Upon trust* to permit the said mortgage debts or sums, and interest, and the residue of the said term of one thousand years, to wait upon and attend the reversion, freehold, inheritance, and equity of redemption of the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, and their appurtenances, and to protect the same from all mesne incumbrances, or other adverse claims or demands whatsoever (if any); (*Covenant from* [*transferror*] *that he has done no act whereby the debts or term are incumbered, or whereby he is prevented or hindered from making or executing the assignments hereinbefore contained*); AND the said [*purchaser*] doth hereby for himself, his heirs, executors, and administrators (*d*), COVENANT, promise, and agree with and to the said [*trustees for sale*], and each of them, and

Declaration that the transferree shall stand possessed of the mortgage debts and term of 1000 years, In trust to attend the inheritance.

Covenant from the transferror that he has done no act to incumber.

The purchaser covenants to indemnify the trustees for sale from the mortgagedebts,

(*d*) This covenant is properly inserted here, as the debts are still legally subsisting as against the estate of the mortgagor; but if it were omitted, and the transferree were to attempt to enforce the debts against the trustees and executors of the mortgagor, he would be immediately restrained by a court of equity, since he is merely a trustee for the purchaser, who, on the face of the deed, is evidently the only party liable to pay the debts.

their and each of their executors and administrators, that he the said [*purchaser*], his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, well and effectually save, defend, and keep harmless and indemnified the said [*trustees for sale*], and each of them, and their and each of their heirs, executors, and administrators, and the heirs, executors, and administrators of the said [*mortgagor*], and every of them, and their and every of their estates and effects whatsoever and wheresoever, from and against the payment of the said mortgage debts or sums, and interest, hereby firstly assigned, or intended so to be, and every of them, and every part thereof respectively, and from and against all actions, suits, losses, damages, costs, charges, and expenses whatsoever, for or on account of the same, or any of them, or any matter, cause, or thing in anywise relating thereto. IN WITNESS, &c.

CONVEYANCE IN FEE, AND TRANSFER OF MORTGAGE DEBTS TO ATTEND THE INHERITANCE.

and all claims on account thereof.

TRANSFER *from a* FIRST *Mortgagee, of his Debt and Securities to a* TRUSTEE *for a* SECOND *Mortgagee; such Transfer being contained in the Second Mortgage Deed.*

OF A FIRST MORTGAGE TO A TRUSTEE FOR A SECOND MORTGAGEE.

THIS INDENTURE, made the day of , BETWEEN [*mortgagor*] of, &c. of the first part; [*first mortgagee*] of, &c. of the second part; [*second mortgagee*] of, &c. of the third part; [*one trustee*] of, &c. and [*other trustee*] of, &c. of the fourth part; and [*transferree*] of, &c. of the fifth part; WHEREAS by indentures of lease and release, &c. (*Recite a conveyance from A. B. to the mortgagor in fee, see ante, p.* 203;) AND WHEREAS by indentures of lease and release, &c. (*Recite conveyance in fee to the first mortgagee by way of mortgage, and an accompanying bond, see ante, p.* 203 *and* 204;) AND

Parties.

Recites conveyance to the mortgagor; the first mortgage;

the agreement to lend mort-

OF A FIRST MORTGAGE TO A TRUSTEE FOR A SECOND MORTGAGEE.

gagor a sum of —*l.* to pay off the first mortgage, and answer other occasions,

on the repayment thereof being secured by a mortgage of the premises, and an assignment of the first mortgage.

WHEREAS the said principal sum, &c. (*is owing, but all interest has been paid, as ante, p.* 204 ;) AND WHEREAS the said [*mortgagor*] is desirous of paying off the said mortgage debt, or sum of pounds, and for that purpose, and to answer his other occasions, hath applied to the said [*second mortgagee*] to lend him the sum of pounds, which he the said [*second mortgagee*] hath agreed to do, upon having the same sum, with interest thereon, after the rate of five pounds for one hundred pounds by the year, secured by a mortgage in manner hereinafter mentioned, of the said messuages, tithes, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, and their appurtenances, and by an assignment or transfer to the said [*transferree*], of the said mortgage debt or sum of pounds, secured by the said hereinbefore recited indentures of the and days of , as aforesaid, and of the interest hereafter to become due for the same, and of the securities for the same respectively : NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and (*in consideration of the sum of pounds, to the* [*first mortgagee*], *and of the sum of pounds to the* [*mortgagor*] *paid by the* [*second mortgagee*], *and for a nominal consideration from the trustees, see ante, p.* 243, 266—267) ; HE the said [*mortgagor*], at the request, and by the desire, and upon the nomination of the said [*second mortgagee*] (testified, *&c.*) *Hath* granted, &c. (*conveyance of the premises to the trustees, as ante, p.* 244.) *In trust* for the said [*second mortgagee*], his heirs and assigns; *But* subject nevertheless to the said mortgage so made to the said [*first mortgagee*], his executors, administrators, and assigns, by the said hereinbefore recited indentures of the and days of , as aforesaid, and to the payment of the said debt or sum of pounds, secured thereby, as herebefore is mentioned, and of the interest hereafter to become due for the same ; *And* also under and subject to the provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same : PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties here-

First witnessing part.

Mortgagor, in consideration of —*l.* to the mortgagee, and —*l.* to himself paid by second mortgagee,

conveys the premises to the trustees,

In trust for the second mortgagee;

but subject to the first mortgage, and to the provisoes after contained.

Proviso for redemption.

OF A FIRST MORTGAGE TO A TRUSTEE FOR A SECOND MORTGAGEE.

to, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, or any of them, shall and do well and truly pay, or cause to be paid, unto the said [*second mortgagee*], his heirs, executors, administrators, and assigns, the sum of pounds, of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of five pounds for one hundred pounds by the year, to be computed from the day of the date of these presents, on or at the days or times hereinafter mentioned (that is to say); the sum of pounds, (being the amount of one half year's interest on the said sum of pounds, after the rate aforesaid) on the day of now next ensuing; and the sum of pounds, (being the amount of the said principal sum of pounds, and another half year's interest thereon, after the rate aforesaid) on the day of , which will be in the year 183 , without any deduction or abatement out of the same sum and interest, or any part thereof, for or in respect of any present or future taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever; *Then* and in such case, and at any time thereafter, they the said [*trustees*], their heirs or assigns, shall and will upon the request, and at the proper costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, reconvey the said messuages, tithes, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, unto the said [*mortgagor*], his heirs or assigns, or as he or they shall in that behalf order or direct, free from all incumbrances whatsoever, made, done, or committed by the said [*trustees*], or either of them, or their or either of their heirs or assigns, so as for the doing thereof they the said [*trustees*], or either of them, or their or either of their heirs or assigns, be not compelled or compellable to go or travel from their or any of their usual places or place of abode or dwelling; (*Covenant from the mortgagor with the second mortgagee, for payment of the sum of pounds and interest, at the times mentioned in the aforesaid proviso; Usual covenants from the mortgagor with the trustees for the title; Proviso for quiet enjoyment by the mortgagor*

Usual mortgage covenants and provisoes.

OF A FIRST MORTGAGE TO A TRUSTEE FOR A SECOND MORTGAGEE.

until default; and power to trustees, in case of default, to sell the premises, at the request of the second mortgagee. For these forms, see Index, and title Mortgages.) AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and particularly of the said sum of pounds, so paid by the said [*second mortgagee*] to the said [*first mortgagee*] as hereinbefore is mentioned and recited, and also in consideration of the sum of ten shillings, of &c. by the said [*transferree*] to the said [*first mortgagee*] paid, at, &c. (the receipt, &c.), HE the said [*first mortgagee*], at the request and by the direction of the said [*mortgagor*], and upon the nomination of the said [*second mortgagee*], (testified by their respectively being parties to, and sealing and delivering these presents), *Hath* granted, bargained, sold, assigned, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, and set over unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT the said debt or sum of pounds, which is now due and owing to the said [*mortgagee*], on the security of the said hereinbefore recited indentures of the and days of as aforesaid; *And* the interest which shall from henceforth become due, for or in respect of the same, and also the said covenant and bond, &c. (*as in p.* 205, &c.); *And* all the right, &c. Together with full power and authority, &c. TO HAVE, HOLD, RECEIVE, AND TAKE the said debt or sum of pounds and interest, and all and singular other the premises hereby assigned or intended so to be, and every part thereof, unto the said [*transferree*], his executors, administrators, and assigns, absolutely; *In trust* nevertheless for the said [*second mortgagee*], his executors, administrators, and assigns, for better securing to him and them the repayment of the said sum of pounds and interest, secured by these presents; *And* subject thereto, *In trust* for the said [*mortgagor*], his executors, administrators, and assigns, and to assign and dispose of the same as he or they shall for that purpose order or direct: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the

Second witnessing part.

The first mortgagee assigns to the transferree

the mortgage debt or sum of —*l.*,

Habendum unto the transferree absolutely,

In trust for the second mortgagee, for securing his debt, and subject thereto, for the mortgagor.

Third witnessing part.

Transferror conveys the premises com-

premises, and particularly of the said sum of pounds so paid by the said [*second mortgagee*] to the said [*first mortgagee*] as aforesaid, and for the nominal consideration hereinbefore expressed, He the said [*first mortgagee*], at the request, &c. (*as above*), *Hath* bargained, sold, and released, &c. (*Conveyance of the premises before granted and released, and their appurtenances, to the transferree in fee, subject to redemption; and covenant from the first mortgagee with the transferree, that he has done no act to incumber, as ante, p.* 207.) In witness, &c.

OF A FIRST MORTGAGE TO A TRUSTEE FOR A SECOND MORTGAGEE.

prised in the first mortgage to the transferree, subject to the right of redemption.

Transfer *of several Annuities, Judgments, and other Incumbrances, to a* Trustee *for the* Transferree *of a* Mortgage, *where the Annuities, Judgments, and other Incumbrances, were assigned by a* Separate *Instrument from the Transfer of the Mortgage, and were specified in two several* Schedules *at the end of the Deed of Assignment.*

OF ANNUITIES AND INCUMBRANCES, IN A SCHEDULE, TO A TRUSTEE FOR A MORTGAGEE, BY A SEPARATE DEED.

This Indenture made the day of , Between [*trustee of the incumbrances in the first schedule*] of, &c. of the first part; [*trustee of the incumbrances in the second schedule*] of, &c. of the second part; [*transferror*] of, &c. of the third part; [*mortgagor*] of, &c. of the fourth part; [*transferree*] of, &c. of the fifth part; [X. Y.], of, &c. of the sixth part; and [Y. Z.], of, &c. of the seventh part; Whereas by an indenture of release, bearing date on or about the day of , and made, or expressed to be made, between the said [*mortgagor*], of the one part, and the said [*transferror*], of the other part, and grounded on a lease for a year, therein mentioned or referred to, *All that* the manor or lordship of, &c. (*parcels*) together with the rights, members, and

Parties.

Recital of a mortgage in fee to the transferror;

OF ANNUITIES AND INCUMBRANCES, IN A SCHEDULE, TO A TRUSTEE FOR A MORTGAGEE, BY A SEPARATE DEED.

appurtenances, to the said manor, messuages or tenements, farms, lands, hereditaments, and premises belonging, or in anywise appertaining, were (in consideration of the sum of pounds, by the said [*transferror*] to the said [*mortgagor*] paid, as in the said indenture is mentioned) conveyed by the said [*mortgagor*], unto and to the use of the said [*transferror*], his heirs and assigns for ever; *But* subject nevertheless to the several annuities, judgments, and other incumbrances mentioned and set forth in the several schedules hereunder written, or hereunto annexed, and to the several terms of years created in the same premises, as in the same schedules are mentioned; *And also* subject to a proviso or condition in the said indenture contained, for redemption of the said premises, on payment by the said [*mortgagor*], his heirs, executors, or administrators, to the said [*transferror*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same, after the rate of five pounds for one hundred pounds by the year, on the day of then next (*recite the covenant for payment, as in p.*204); AND WHEREAS upon the treaty for the loan of the said sum of pounds, secured by the said hereinbefore recited indenture as aforesaid, it was agreed that a competent part of the said sum should be applied in the repurchasing and paying off the said several annuities, judgments, and other incumbrances mentioned and set forth in the said schedules hereunder written, or hereunto annexed; *And* that the said annuities, judgments, and other incumbrances, together with the securities for the same, should be assigned unto the said [*trustee of the incumbrances in the first schedule*], and [*trustee of the incumbrances in the second schedule*], *In trust* for the said [*transferror*], his executors, administrators, and assigns, for better securing to him and them the said sum of pounds and interest, secured by the said hereinbefore recited indenture as aforesaid; *And* soon after the execution of the said indenture, a sufficient part of the said sum of pounds was applied by the said [*mortgagor*], in repurchasing and paying off the said annuities, judgments, and other incumbrances, pursuant to the said agreement, and thereupon the said annuities, judgments, and other incumbrances mentioned and set forth

the agreement that part of the sum lent should be applied in paying off the incumbrances mentioned in the schedules, and that the incumbrances should be assigned to trustees for the transferror;

that part of the said sum was so applied;

OF ANNUITIES AND INCUMBRANCES, IN A SCHEDULE, TO A TRUSTEE FOR A MORTGAGEE, BY A SEPARATE DEED.

in the first schedule (*a*) hereunder written, or hereunto annexed, together with the securities for the same, were, by the several indentures in the last column of the same schedule mentioned or referred to, assigned to the said [*trustee of the incumbrances in the first schedule*], his executors, administrators, and assigns, *In trust* for the said [*transferror*], his executors, administrators, and assigns, in manner hereinbefore expressed; *And* the said annuities, judgments, and other incumbrances mentioned and set forth in the second schedule hereunder written, or hereunto annexed, together with the securities for the same, were, by the several indentures mentioned or referred to in the last column of the same schedule, assigned to the said [*trustee of the incumbrances in the second schedule*], his executors, administrators, and assigns, *In trust* for the said [*transferror*], his executors, administrators, and assigns, in like manner; (*recite that the principal is due, as in page* 204); AND WHEREAS by an indenture of assignment and release, bearing even date with these presents, and made, or expressed to be made, between the said [*transferror*], of the first part; the said [*mortgagor*], of the second part; and the said [*transferree*], of the third part; and grounded, so far as the same was intended to operate as a release on a lease for a year, therein mentioned or referred to, *All that* the said debt or sum of pounds, secured by the said hereinbefore recited indenture as aforesaid, and the interest henceforth to become due for the same, have (in consideration of the sum of pounds by the said [*transferree*] to the said [*transferror*] paid, as in the said indenture now in recital is mentioned,) been assigned by the said [*transferror*], with the privity and approbation of the said [*mortgagor*], unto the said [*transferree*], his executors, administrators, and assigns, for his and their own absolute use and benefit; *And* by the said indenture now in recital, and the lease for a year therein mentioned or referred to,

and the incumbrances mentioned in the first schedule were assigned to one trustee;

and the incumbrances mentioned in the second schedule were assigned to another trustee;

An indenture of even date, whereby transferror assigns his mortgage to the transferree;

(*a*) The incumbrances were transferred to two different trustees, for the purpose of preventing a merger of the several terms of years created for securing the annuities and mortgage debts, each trustee taking alternate terms, in the order of their creation. This made it proper to have two schedules.

Reason for two schedules.

OF ANNUITIES AND INCUMBRANCES, IN A SCHEDULE, TO A TRUSTEE FOR A MORTGAGEE, BY A SEPARATE DEED.

All that and those the said manor, messuages or tenements, farms, lands, hereditaments, and premises comprised in and conveyed by the said hereinbefore recited indenture, and the lease for a year on which the same was grounded, and their rights, members, and appurtenances, have (for the consideration in the said indenture now in recital and hereinbefore mentioned) been conveyed by the said [*transferror*], with the privity and approbation of the said [*mortgagor*], unto and to the use of the said [*transferree*], his heirs and assigns for ever; *But* subject nevertheless to the several annuities, judgments, and other incumbrances mentioned and set forth in the said schedules hereunder written or hereunto annexed, and to the several terms of years created in the same premises, as in the said schedules hereinbefore is mentioned; *And* also subject to such right, title, and equity of redemption, as is subsisting in the same premises under or by virtue of the said hereinbefore recited indenture; AND WHEREAS it hath been agreed, that the said [*trustee of the incumbrances in the first schedule*], and [*trustee of the incumbrances in the second schedule*], should respectively make and execute the assignments hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance, and part performance of the said agreement, and in consideration of the premises, and of (*a nominal consideration*), HE the said [*trustee of the incumbrances in the first schedule*], at the request and by the direction of the said [*transferror*], and with the privity and approbation of the said [*mortgagor*], and upon the nomination of the said [*transferree*], (testified &c.), *Hath* bargained, sold, assigned, transferred, and set over, *And* by these presents, *Doth* bargain, sell, assign, transfer, and set over, unto the said [X. Y.], his executors, administrators, and assigns, ALL THOSE the said several annuities, debts, charges, and incumbrances, mentioned and set forth in the said first schedule hereunder written, or hereunto annexed; *And* all arrears, and future payments of the same annuities, and all interest now due, and hereafter to become due, for the said debts or sums; *And* also all covenants, bonds, warrants of attorney, and judgments, which have been entered into or given for the

and the agreement that the trustees of the incumbrances should make the assignments after contained.

First witnessing part.

Trustee of the incumbrances in the first schedule assigns

the incumbrances in the first schedule,

payment of the said annuities, debts, charges, and incumbrances, or any of them; *Together* with all the powers and authorities of the said [*trustee of the incumbrances in the first schedule*], to demand, sue for, &c., (*as ante, p.* 205.); *And* all the right, &c.; To HAVE, HOLD, RECEIVE, AND TAKE, the said annuities, debts, charges, incumbrances, arrears, future payments, interest, securities, and all and singular other the premises hereby firstly assigned, or intended so to be, and every of them, and every part thereof, unto the said [X. Y.], his executors, administrators, and assigns, absolutely; *But* nevertheless, upon the trusts following, (that is to say); *In trust* for the said [*transferree*], his executors, administrators, and assigns (*b*), for better securing to him and them, the said mortgage-debt or sum of pounds, and interest, assigned to him and them by the said lastly hereinbefore recited indenture, as aforesaid; *And* for that purpose, to assign, and dispose of, or

OF ANNUITIES AND INCUMBRANCES, IN A SCHEDULE, TO A TRUSTEE FOR A MORTGAGEE, BY A SEPARATE DEED.

to X. Y., in trust for the transferree of the mortgage, for better securing the mortgage,

(*b*) The following form is sometimes used:—

"*In trust* for the said [*mortgagee*], his executors, administrators, and assigns, and from time to time, during the continuance of the said sum of pounds, and the interest thereof, or any part thereof, on the security of the said recited indenture of even date herewith, to assign and dispose of, or raise and levy, and enforce payment of the said annuities, debts, charges, and incumbrances, and put in force the several securities for the same, in order the more effectually to secure to the said [*mortgagee*], his executors, administrators, and assigns, the due payment of the said sum of pounds, and interest, pursuant to the said last mentioned indenture, and the proviso for redemption therein contained; *And* to the intent that the same annuities, debts, charges, incumbrances, and securities, may for that purpose be made available, as much may be, over, and take precedence of, any charges or incumbrances affecting the said manors, messuages or tenements, farms, lands, hereditaments, and premises, which are mesne, and subsequent in point of creation to the several annuities, debts, charges, and incumbrances hereby assigned, or intended so to be,"

Trust of annuities and other incumbrances, to secure a mortgage-debt and preserve priority.

OF ANNUITIES AND INCUMBRANCES, IN A SCHEDULE, TO A TRUSTEE FOR A MORTGAGEE, BY A SEPARATE DEED.

compel and enforce payment of the same annuities, debts, charges, incumbrances, arrears, future payments, interest, securities, and premises, or any of them, as the said [*transferree*], his executors, administrators, or assigns, shall from time to time, in that behalf, order or direct; *And* subject thereto, *In trust* for the said [*mortgagor*], his executors, administrators, and assigns; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance, and further performance of the said agreement, and for the considerations hereinbefore expressed, HE the said [*trustee of the incumbrances in the first schedule*], at the request, &c., (*as ante, p.* 278), *Hath* bargained, sold, assigned, transferred, and set over, and by these presents, *Doth* bargain, sell, assign, transfer, and set over, unto the said [X. Y.], his executors, administrators, and assigns, ALL SUCH, and so many, and such part and parcel of the said manor, messuages or tenements, farms, lands, hereditaments, and premises, comprised in and conveyed by the said hereinbefore recited indentures, and the leases for a year on which the same are respectively grounded, as were comprised in the said terms of years mentioned in the said first schedule hereunder written, or hereunto annexed, or any of them, and their rights, members, and appurtenances; *And* all the estate, &c., TO HAVE, AND TO HOLD, the said manor, messuages or tenements, farms, lands, hereditaments, and all and singular other the premises hereby secondly assigned, or intended so to be, and every part thereof, with their rights, members, and appurtenances, unto the said [X. Y.], his executors, administrators, and assigns, for all the respective residues and remainders which are now to come and unexpired, of and in the same several terms of years; *But* nevertheless, upon the trusts, and subject to the powers and provisoes expressed and contained concerning the same, in and by the indentures whereby the same terms were respectively created, as in the said first schedule hereunder written, or hereunto annexed, is mentioned (*c*), but so that the benefit of the

and subject thereto, for the mortgagor.

Second witnessing part. The trustee of the incumbrances in the first schedule assigns

such of the manors, &c. comprised in the mortgage, as were comprised in the term of years mentioned in the same schedule,

to X. Y. for the residue of the terms, and subject to the trusts thereof, but so that the benefit of the trusts may belong to the transferree of the mortgage.

(*c*) Where the debts are assigned to one trustee, and the terms to another, say:

"but so that the benefit of the same trusts, powers, and

same trusts, powers, and provisoes, may be transferred and belong to the said [*transferree*], his executors, administrators, and assigns, in manner and to the extent hereinbefore mentioned; AND the said [*trustee of the incumbrances in the first schedule*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT and declare with and to the said [X. Y.], his executors, administrators, and assigns, that he the said [*trustee of the incumbrances in the first schedule*], hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said annuities, debts, charges, incumbrances, arrears, future payments, interest, securities, and premises hereby firstly assigned, or intended so to be, or any of them, or any part thereof, or the said manor, messuages or tenements, farms, lands, hereditaments, and premises hereby secondly assigned, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be in any wise impeached, charged, assigned, released, discharged, incumbered, or in any manner prejudicially affected, or whereby or by reason or means whereof the said [*trustee of the incumbrances in the first schedule*], is in any wise prevented or hindered from making the assignments hereinbefore on his part contained; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and (*a nominal consideration*), HE the said [*trustee of the incumbrances in the second schedule*], at the request, and by the direction of the said [*transferror*,] and with the privity and approbation of the said [*mortgagor*], and upon the nomination of the said [*transferree*] (so testified as aforesaid), *Hath*, &c. (*assigns to* [*Y. Z.*], *the incumbrances in the second schedule, In trust for the transferree of the mortgage, and*

OF ANNUITIES AND INCUMBRANCES, IN A SCHEDULE, TO A TRUSTEE FOR A MORTGAGEE, BY A SEPARATE DEED.

Covenant from the trustee of the incumbrances in the first schedule, that he has done no act to incumber.

Third witnessing part. Trustee of the incumbrances in the second schedule assigns them to Y. Z., In trust as in the first witnessing part.

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provisoes may be transferred and belong to the said [*trustee of the debts*], his executors, administrators, and assigns, as such trustee and trustees as hereinbefore mentioned,"

OF ANNUITIES AND INCUMBRANCES, IN A SCHEDULE, TO A TRUSTEE FOR A MORTGAGEE, BY A SEPARATE DEED.

the mortgagor, as ante, p. 278, 279): AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations lastly hereinbefore expressed, HE the said [*trustee of the incumbrances in the second schedule*], at the request, and by the direction of the said [*transferror*], and with the privity and approbation of the said [*mortgagor*], and by the nomination of the said [*transferree*] (so testified as aforesaid), *Hath*, &c., (*assigns to* [*Y. Z.*], *such of the premises comprised in the mortgage, as were comprised in the terms of years mentioned in the second schedule, for the residues of those terms, and subject to the trusts thereof, but so that the benefit of those trusts may belong to the transferree of the mortgage, as ante, p.* 280); AND the said [*trustee of the incumbrances in the second schedule*], *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [Y. Z.], his executors, administrators, and assigns, (*that he hath done no act to incumber, as ante, p.* 281.) IN WITNESS, &c.

Fourth witnessing part.

The trustee of the incumbrances in the second schedule assigns the terms mentioned in that schedule to Y. Z. In trust as in the second witnessing part.

(*Here add the schedules.*) (*d*).

How the schedules were made.

(*d*) The first column of the schedules contained the date and nature of the securities; the second, the amount of the annuities, mortgage debts, &c.; the third, the names of the annuitants, mortgages, &c.; the fourth, statements of the premises charged; the fifth, the number of years for which the terms were granted; the sixth, the names of the persons to whom the terms were granted; and the seventh, the date of the instruments by which the annuities, mortgages, terms, &c. were assigned to the trustees for the transferror.

TRANSFER *of a Mortgage of* LEASEHOLDS, *where a further Sum of Money is advanced* (*a*).

OF A MORTGAGE OF LEASEHOLDS.

THIS INDENTURE, made the day of , BETWEEN [*transferror*] of, &c. of the first part; [*mortgagor*] of, &c. of the second part; and [*transferree*] of, &c. of the third part: WHEREAS by an indenture of lease, bearing date the day of , and made, &c. between [A. B.], therein described, of the one part, and the said [*mortgagor*], of the other part; the messuage or tenement and premises hereinafter described, and intended to be hereby assigned, and their appurtenances, were demised and leased by the said [A. B.] unto the said [*mortgagor*], his executors, administrators, and assigns, for and during a term of ninety-nine years from Midsummer day then last past, at the yearly rent of pounds, payable quarterly, as in the said indenture is mentioned, and under

Parties.

Recital of a lease;

(*a*) It was formerly the general practice to prepare transfers of mortgages in the manner of this precedent; that is, to convey or assign the estate in mortgage to the transferree, discharged from the old proviso, but subject to a new proviso for redemption, on payment to the transferree of the principal and interest secured by the transfer, and to make the mortgagor enter into a fresh covenant with the transferree for the payment of such principal and interest; but the modern practice is, to assign the mortgage-debt to the transferree, and give him a power of attorney to receive, and, on non-payment, sue for it, and to convey or assign the estate in mortgage to the transferree, subject to the subsisting equity of redemption. In favour of the modern practice it is urged, that where the old proviso for redemption is extinguished, and the money paid by the transferree is expressed to be paid in satisfaction of the old mortgage debt, and a new proviso for redemption is inserted in the transfer, and a new covenant for the payment of the money is entered into by the mortgagor

As to the different modes of preparing transfers of mortgages.

OF A MORTGAGE OF LEASEHOLDS.

and subject to the covenants, conditions, and agreements in the same indenture contained, on the part of the said [*mortgagor*] to be observed and performed; AND WHEREAS by an indenture of assignment by way of mortgage, bearing date the day of , and made, &c. between the said [*mortgagor*], of the one part, and the said [*transferror*], of the other part, the said messuage or tenement and premises hereinafter described, and intended to be hereby assigned, and their appurtenances, were (in consideration of the sum of pounds, by the said [*transferror*] to the said [*mortgagor*] paid, as in the said indenture now in recital is mentioned) assigned by the said [*mortgagor*] to the said [*transferror*], his executors, administrators, and assigns, for and during the then residue and remainder of the said term of ninety-nine years, created by the said hereinbefore recited indenture of lease as aforesaid, at, under, and subject to the rent, covenants, conditions, and agreements in and by the same indenture reserved and contained, on the tenant's or lessee's part to be paid, observed, and performed; *And* also subject to a proviso or agreement in the said indenture now in recital contained, &c. (*for redemption, see ante, p.* 220); AND WHEREAS default was made in payment of the said

of an assignment by way of mortgage;

that default

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with the transferree, the instrument is rather to be considered as creating a new mortgage debt, than as a transfer of the old one, and is therefore liable to the payment of a new mortgage-*ad valorem* duty. Those who adopt the old form consider that by the clause in the Stamp Act exempting transfers of mortgages from *ad valorem* duty, the legislature intended that in all cases where the money advanced by the mortgagee was applied in discharge of a prior existing mortgage debt, in respect of which *ad valorem* duty had been paid, no further *ad valorem* duty should be payable; and therefore that an instrument of the description last alluded to may be properly regarded, as a "transfer of a mortgage," within the meaning of the Stamp Act. Where it is necessary to keep on foot an old mortgage, either to save the payment of new duty, or to secure priority over subsequent incumbrances, the modern mode of transfer is strongly to be recommended. In other cases it seems advisable, instead of making a transfer of a mortgage in the old form, clearly to discharge the estate from the old mortgage, and then create a new mortgage.

Where modern mode is to be recommended.

OF A MORTGAGE OF LEASEHOLDS.

sum of pounds and interest, secured by the said lastly hereinbefore recited indenture as aforesaid, on or at the day or time in the aforesaid proviso or condition mentioned or appointed for the payment thereof, and thereupon the estate of the said [*transferror*] in the said term became absolute at law, and redeemable only in equity; AND WHEREAS the said principal sum of pounds, secured by the said lastly hereinbefore recited indenture as aforesaid, is still owing, but all interest for the same, up to the day of the date hereof, has been paid, as they the said [*mortgagor*] and [*transferror*] do hereby respectively admit and declare; AND WHEREAS the said [*mortgagor*], being desirous of paying off the said sum of pounds, and of raising a further sum of pounds, to answer his other occasions, hath applied to the said [*transferree*] to advance and lend him the sum of pounds, which he the said [*transferree*] hath consented and agreed to do, upon having the repayment thereof, with interest for the same, after the rate of five pounds for one hundred pounds by the year, secured to him at the times, and in manner hereinafter mentioned and expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*transferree*], at the request and by the direction of the said [*mortgagor*], (testified by his being a party to, and executing these presents) to the said [*transferror*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds, the said [*transferror*] doth hereby admit and acknowledge, and declare the same to be in full satisfaction and discharge of the said principal sum of pounds, so due and owing to the said [*transferror*], on the security of the said lastly hereinbefore recited indenture as aforesaid, and of and from the same sum, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*transferree*], his executors, administrators, and assigns, and also the said [*mortgagor*], his heirs, executors, administrators, and assigns); *And* also in consideration of the sum of pounds of like lawful money by the said [*trans-*

was made in payment of the mortgage-debt;

that the principal sum is still owing, but all interest has been paid;

and the agreement by the transferree to lend the mortgagor a sum of —*l.* to pay off the mortgage, and answer his other occasions.

Witnessing part.

In consideration of —*l.* to the transferror, and —*l.* to the mortgagor paid by the transferree,

OF A MORTGAGE OF LEASEHOLDS.

ferree] to the said [*mortgagor*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds, and the payment of the said sum of pounds, (making together the sum of pounds), the said [*mortgagor*] doth hereby admit and acknowledge, and of and from the same sums, and every part thereof respectively, doth hereby acquit, release, and for ever discharge the said [*transferree*], his executors, administrators, and assigns), HE the said [*transferror*], at the request and by the direction of the said [*mortgagor*], (so testified as aforesaid,) *Hath* bargained, sold, assigned, transferred, and set over, *And* by these *Doth*, bargain, sell, assign, transfer, and set over; *And* the said [*mortgagor*] *Hath* granted, bargained, sold, assigned, transferred, set over, and confirmed, *And* by these presents *Doth* grant, &c. unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT messuage or tenement, &c. (*parcels*), *And* all the estate, &c. (*b*) TO HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, with their and every of their appurtenances (freed and for ever discharged of and from the proviso or condition for redemption in the said lastly hereinbefore recited

the transferror assigns, and the mortgagor assigns and confirms to transferree,

Parcels.

Habendum, (free from the proviso for redemption contained in the mortgage, and all right of redemption under it) unto the

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(*b*) In a transfer of a mortgage of *freeholds*, according to the old form, the habendum should be as follows:

Habendum in a transfer of a mortgage of freeholds in the old form.

"TO HAVE AND TO HOLD the said messuage or tenement, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and their appurtenances, unto the said [*transferree*] and his heirs; To the use of him the said [*transferree*], his heirs and assigns for ever, absolutely freed and for ever discharged of and from the said proviso or agreement for redemption contained in the said hereinbefore recited indenture of release of the day of as aforesaid, and all equity or right of redemption subsisting upon or under the same; *But* subject nevertheless to the proviso or agreement for redemption hereinafter contained."

OF A MORTGAGE OF LEASEHOLDS.

indenture contained as aforesaid, and all equity of redemption subsisting under or by virtue of the same) unto the said [*transferree*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of ninety-nine years, created by the said hereinbefore recited indenture of lease as aforesaid, at, under, and subject to the rent, covenants, conditions, and agreements in and by the same indenture respectively reserved and contained on the lessee's part to be paid, observed, and performed, but indemnified against as hereinafter is mentioned; *And* also under and subject to the proviso or condition for redemption hereinafter contained; (*Covenant from the transferror that he has done no act whereby the messuage or tenement and premises are incumbered*): PROVIDED ALWAYS, and it hereby agreed and declared between and by the said parties hereto, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do, on the day of , 183 , well and truly pay, or cause to be paid, unto the said [*transferree*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, *And* shall and do in the mean time, pay interest for the same sum, after the rate of five pounds for one hundred pounds by the year, by two equal half yearly portions, on the day of , and the day of , in every year; *And* shall and do make the said several payments, without any deduction or abatement out of the same, or any of them, for or on account of any taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever; *Then*, and in such case, and at any time thereafter, he the said [*transferree*], his executors, administrators, or assigns, shall and will, at the request and expense of the said [*mortgagor*], his executors, administrators, or assigns, re-assign and assure the said messuage or tenement, and premises hereby assigned, or intended so to be, and their appurtenances, unto the said [*mortgagor*] his executors, administrators, or assigns, for all the residue and remainder, which shall be then to come and unexpired of the said term of ninety-nine years, created therein as aforesaid, or

transferree for the remainder of the term, at the rent and subject to the covenants contained in the lease, and also subject to a proviso for redemption, on payment of —*l.* and interest.

Proviso for redemption.

OF A MORTGAGE OF LEASEHOLDS.

otherwise, or as he or they shall in that behalf order or direct, free from all incumbrances whatsoever, made, done, or committed by the said [*transferree*], his executors, administrators, or assigns, so as for the doing thereof he or they be not compelled or compellable to go or travel from his or their usual place or places of abode or dwelling; (*Covenants by* [*mortgagor*] *for payment of the principal sum of pounds and interest, at the times thereinbefore mentioned, and for the title; and also for indemnifying the transferree against the rent and covenants in the lease during the continuance of the mortgage; proviso for quiet enjoyment by the mortgagor until default; and provision for insurance against loss or damage by fire.*) (*c*). IN WITNESS, &c.

Usual covenants, &c. in mortgages of leaseholds.

(*c*) For the above forms, see the Index, and the Precedents, under the title MORTGAGES; and for general observations on the proper mode of preparing mortgages of leaseholds, see the Forms of such mortgages under that title.

TRUST-DEEDS.

UNDER this title might be included a great variety and number of precedents; but it would be impossible here to provide for every case in which a Trust-deed is wanted. Several trust-deeds are introduced under MORTGAGES, SETTLEMENTS, and other preceding titles, and it will be therefore sufficient if the precedents under the present title comprise;— Different kinds of trust-deeds here noticed.

I. TRUST-DEEDS BY WAY OF SECURITY. 1st. Deeds by way of security.

II. TRUST-DEEDS FOR CHARITABLE AND RELIGIOUS PURPOSES. 2d. Deeds for charitable and religious purposes.

III. TRUST-DEEDS ON ARRANGEMENTS BETWEEN DEBTORS AND CREDITORS. 3d. Deeds between debtors and creditors.

I. *Trust-Deeds by way of Security.* Many observations on this head will not be necessary, as the reader will find, under the title MORTGAGES, most of the points and practical directions, which it would otherwise be proper to notice here. At one time, trust-deeds of this kind—or conveyances upon trust to reconvey on payment of the money secured at the time agreed on, or, in case of default, to sell—were very common, and often used instead of mortgages; but doubts having been entertained whether the rules applicable to mortgages in regard to *tacking* applied to instruments of this description, and also whether a creditor under such a deed must not, at all events, proceed to a sale,—even where a foreclosure of the equity of redemption would be most advisable,—they have of late fallen much into disuse, and securities on land are now most frequently prepared in the form of a mortgage, with a power of sale. First kind of trust deeds formerly very usual, but nearly superseded by mortgages, with powers of sale.

Where life-interests, policies, debts, furniture, legacies, reversionary interests in stock or monies, or other property of a similar description, form the subject of the security, assignments in trust to sell are more general than assignments by way of mortgage, as in those cases resort is almost always had to a sale, instead of a bill for foreclosure. Cases in which trust deeds are still used.

In trust-deeds of the kind alluded to, it is usual to make the borrower first covenant with the lender to pay the money with interest at the time appointed, and then to convey or assign the property to the trustees, upon trust, if the money and interest be duly paid, to reconvey or reassign to the borrower; but if default should be made in such payment, then to sell, and out of the money arising thereby to pay the Mode in which trust-deeds are usually prepared.

expenses of the sale, and the debt and interest, and to pay the surplus to the borrower. A declaration is then added, that until the premises shall be reconveyed or sold, the trustees shall receive the rents as they become due, and shall thereout keep down the interest of the debt secured, and (where the premises consist of buildings) pay the premiums payable for keeping the premises insured against damage by fire; and shall pay the surplus to the borrower, or owner of the estate (*a*). Provisions for insurance, and for leasing the premises, in case they become untenanted, and covenants for title, should follow, nearly as in a mortgage deed.

Manner in which such securities should be transferred.

In all cases in which the security is made by a conveyance or assignment to trustees, in trust to sell, care should be taken that the deed contains a power to change the trustees; and in the event of a transfer of the security, the simplest, neatest, and most correct mode of effecting it is, by the deed of transfer to make the trustees in the trust-deed decline any further to act in the trusts, and then to make the creditor, with the privity of the transferree, appoint new trustees, pursuant to his power, and thereupon the old trustees should convey or assign the premises to the new trustees, upon the trusts declared in the trust-deed;—the *debt* being by the first witnessing part assigned by the creditor to the transferree (*b*).

Whether power of sale affects the right of foreclosure, and usual mode of obviating any question on it.

It has been thought that a power of sale in a mortgage would prejudice the mortgagee's right of foreclosure, and make it imperative on the mortgagee to exercise the power of sale; and to avoid this, some conveyancers adopted the practice of taking the power of sale in a separate deed; or rather, of preparing the mortgage without any power of sale, by one deed, and taking a conveyance of the same estate to trustees, in trust to sell, by a separate deed of even date. The general opinion of the profession, however, seems to be, that a power of sale in a mortgage will not interfere with the right of foreclosure, and at any rate that a proviso in the mortgage deed that the power shall not have that effect, will be abundantly sufficient; and consequently, that the above mode of preparing the securities is not to be recommended.

When a trust for sale effects a conversion of real estate into personal estate.

What has been agreed to be done, or, in pursuance of a trust or direction ought to be done, is considered *in equity* as done; and for most purposes, *land* directed to be sold, will, from the time at which the sale ought to be made, be regarded in equity as *money*; and, if the party to whom the produce of the sale is directed to be made should die before the sale,

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(*a*) See *post*, 333, 334.

(*b*) A form of such a transfer will be found amongst the precedents, under the title MORTGAGES.

the produce will, in these cases, go to his or her *personal* representative; but where the sale is directed for raising a sum of money, or for effecting some other special purpose, and not to be made in all events, the grantor may at any time, by payment of the money, or otherwise accomplishing the object for which the trust for sale is created, prevent a sale and direct a reconveyance; and therefore, till an actual sale, *his* interest in the surplus produce is considered an *interest in land*, which will descend to his *heir*, and not to his executor. The heir, however, will take it as *personal* estate; and, unless he does some act amounting to a reconversion, his interest in the land will vest in his executors or administrators (*c*).

To avoid any difficulty on this head, it is very common in mortgages to insert a special provision that the estate, until actually sold, shall remain real estate, and not be considered personal estate (*d*); and if this be expedient where there is only a *power* to sell, it seems still more important in trust-deeds, where the *trust* for sale is generally directed to be made either, with all convenient speed after default, or at the request of the mortgagee, his executors, administrators, or assigns, and where there seems therefore ground to contend, that the *conversion* of the property in equity takes place immediately on non-payment of the money secured, or on the request to sell being given.

Where trustees are attornies, their costs and expenses should be allowed as between solicitor and client.

In trust-deeds for securing money, it is very common to name as trustees, the solicitors of the lender; and in those cases it is proper that the clause for the reimbursement of the trustees their costs and expenses in executing the trusts, should provide that "such costs and expenses shall be paid, retained, or allowed, as between solicitor and client;" for otherwise the trustees must employ other solicitors, *on agency*, to attend to the *professional* business connected with the execution of the trust, as trustees are not usually allowed to make any charge for their own trouble (*e*).

When trust-deeds by way of security are

Trust-deeds for securing money are liable to mortgage *ad valorem* duty, except where the security is made in favour of five or more creditors; or where that duty, or the bond duty, has been previously paid

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(*c*) *Culpepper* v. *Aston*, 2 Ch. Ca. 115. *Hewit* v. *Wright*, 1 Bro. C. C. 86. *Emblyn* v. *Freeman*, Prec. Cha. 541. *Roper* v. *Radcliffe*, 10 Mod. 230. 1 Strange, 286. 5 Bro. P. C. 360. *Smith* v. *Claxton*, 4 Madd. 488. *Wright* v. *Rose*, 2 Sim. & Stu. 323, 327; and particularly *Van* v. *Barnett*, 19 Ves. 102.

(*d*) See a clause of this nature in Vol. V, p. 313.

(*e*) *Robinson* v. *Pett*, 3 P. Wms. 249. *Gould* v. *Fleetwood*, ibid. 251, n. *Char. Corp.* v. *Sutton*, 2 Atk. 400. *Ayliffe* v. *Murray*, ibid. 59.

liable to mortgage *ad valorem* duty, when not.

in respect of the sum secured; in both which cases the trust-deed is only subject to the common deed stamps of 1*l.* 15*s.* for the first skin, and of 1*l.* 5*s.* for the second and each following skin (*f*).

The object of the second kind of trust-deeds.

II. *Trust-Deeds for Charitable and Religious Purposes.*—The objects of these deeds are the establishment and perpetual continuance of institutions for various benevolent and pious purposes, and the attainment, by means of private conveyances and successive appointments of trustees, of similar advantages to those which are more perfectly secured by incorporations. Indeed, the great object of making corporations, or establishing fictitious bodies, to possess a kind of legal immortality, appears to have been the preservation in perpetuity of various rights and privileges, which were acquired in the progress of civilization, and many of which would probably, but for those establishments, have been now lost. The origin and nature of corporations, and the benefits resulting from their creation, are ably stated by Sir W. Blackstone, in the last chapter of the first volume of the Commentaries, to which the reader, who is desirous of information on the subject, will do well to refer. It is sufficient here to observe, that corporations are created or erected by the king alone, by virtue of his prerogative, or by act of parliament; and that they are generally divided into *Lay* and *Ecclesiastical*; the object of the former being, the advancement and regulation of manufactures or commerce,—the improvement of science, and the promotion of learning—the good government of towns and cities—or the continuance of some other civil advantages or privileges; and the object of the latter being, the furtherance of religion, and the preservation of the rights of the Church. Hospitals for the maintenance of the poor, sick, and impotent, and all colleges, are, in strictness, *lay* corporations, though frequently called, in contradistinction to corporations erected for civil purposes, *eleemosinary* corporations (*g*).

Corporations formerly could purchase lands, but cannot now, without license from the Crown.

By the common law, corporations had the capacity to purchase lands for themselves and successors; but this right having been at different periods exercised to an extent extremely injurious to the general interests of the community—particularly by the religious houses—was afterwards, by different statutes, materially abridged; and they cannot now purchase, or rather hold, lands without a license from the crown (*h*).

(*f*) See *Coates* v. *Perry*, 3 B. & B. 48. 6 J. B. Moore, 88.

(*g*) 1 Bl. Com. 470.

(*h*) 9 Hen. 3. c. 36. 7 Edw. 1. st. 2. 13 Edw. 1. c. 32. 18 Edw. 1. st. 1 c. 3. 27 Edw. 1. st. 1. 34 Edw. 1. st. 3. 35 Edw. 1. c. 1. 18

Alienations to corporations were called alienations in *mortmain*, (in mortua manu), because the lands so aliened became perpetually vested in a body, which, in law, could never die, and the lords of the fee could therefore never receive from the alienee any more than from a *dead* hand,—and so lost the escheats and services which would otherwise become due to them; or because the members of the religious houses (to which most of such alienations were made) were, being professed, reckoned dead persons in law (*i*).

Why alienations to corporations are called Alienations in Mortmain.

After alienations in mortmain, except by license from the crown, were abolished by the 15 Rich. II. c. 5, the popish clergy persuaded the people to make grants of, or charges on, their lands for obits, chanteries, and other like uses, since called *superstitious uses;* and through ignorance and superstition many individuals gave large possessions to the clergy to procure masses to be said for their souls while in purgatory, which ought to have been devoted to the preservation and support of their surviving families.

Introduction of *Superstitious* uses.

These gifts, being equally as injurious as gifts in mortmain, were abolished by the 23 Hen. VIII, c. 10; and by the same act, like gifts were prohibited for the future. The dissolution of the monasteries, and the appropriation to the service of the state of large portions of the possessions of the clergy, soon followed. The papal authority in England was then overthrown, and the supremacy of the three estates in the realm, in all matters, spiritual as well as temporal, was established.

Abolition of such uses, and subversion of the papal authority.

At this time, (the Reformation, as it is called), the people appear to have been rapidly freeing themselves from the bondage of religious slavery and superstition, and licenses to alien in mortmain were granted only in favour of protestant and charitable institutions; and during the latter part of the reign of Henry the VIIIth, and throughout the reign of Edward the VIth, every effort was made for the subversion of the influence of the church of Rome, and the firmer establishment of the reformed church. In the time of Philip and Mary, the Catholic clergy again came into power, and the statutes in restraint of mortmain were suspended; but, happily for the country, the reign of Mary was short, and under her successor, Queen Elizabeth, the acts of Edward the VIth, in regard to religion, were renewed and confirmed, and Protestantism again became the established religion of the land.

The Reformation, or Commencement of Protestantism.

Restoration of the Influence of the Catholic clergy in the reign of Philip and Mary.

In this reign several acts were passed for the encouragement of charitable donations in founding hospitals, seminaries for education, workhouses or abiding-houses for the poor, and other institutions of a

Establishment, under Queen Elizabeth, of the Protestant religion;

Edw. 3. st. 3. c. 3. 15 Ric. 2. c. 5. 23 Hen. 8. c. 10. 1 Edw. 6. c. 14. 7 & 8 Wm. 3. c. 37.

(*i*) 1 Co. Litt. 2 b. 1 Bl. Com. 479.

and of various schools, hospitals, and other charitable institutions.

like nature; and for enquiring into and redressing any abuses that might arise in the employment and application of lands and effects given to charitable uses.

The statute of Charitable uses, 43 Eliz. c. 4.

The great statute of charitable uses is, stat. 43 Eliz. c. 4. It recites that divers lands, tenements, hereditaments, goods, chattels, and monies, had been theretofore given, limited, appointed, and assigned, as well by the Queen's most excellent majesty and her most noble progenitors, as by sundry other well-disposed persons; some for relief of aged, impotent, and poor people; some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars of universities; some for repairs of bridges, ports, havens, causeways, churches, sea-banks, and highways; some for education and preferment of orphans; some for the relief, stock, and maintenance of houses of correction; some for marriages of poor maids; some for supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers, and other taxes; and that the said lands had not been employed according to the charitable intentions of the givers, by reason of fraud, breaches of trust, and negligence in those that should pay or employ the same; and then enacts that the Lord Chancellor shall award commissioners to enquire of such gifts, and of all abuses, breaches of trust, and misemployments in relation to any lands, tenements, hereditaments, goods, chattels, and monies, theretofore given, limited, appointed, or assigned, or which *thereafter should* be given, limited, appointed, or assigned to or for any of the charitable and goodly uses thereinbefore mentioned, and to make such orders for the application and employment of such lands and effects to or for the charitable uses intended, as they should think fit, the same to be certified to, and executed under the decree of, the Court of Chancery. The act contains a provision that it shall not extend to the universities, or certain colleges therein mentioned, or to any college, hospital, or other charity having special visitors or governors appointed by it's founder; and also a clause for indemnifying purchasers for a valuable consideration, and without notice.

Devises to charitable uses valid under that statute.

By the statute of Wills (*k*), testators were prevented from devising their lands to corporate bodies; but such devises, when made for charitable uses, within the act of the 43 Eliz. c. 4., were held to be valid under that act; and it is probable that many of the large dispositions which have been made by will in favour of charities by virtue of this act, would have been considered extremely improvident and un-

(*k*) 34 and 35 Hen. 8, c. 5.

reasonable by the testators themselves at any previous period of their lives.

Mortmain act passed in the reign of Geo. 2.

In the early part of the reign of George the Second, the legislature appears to have thought it necessary to impose a check on dispositions of land for purposes which would take it out of general circulation, and to prevent persons from making gifts to charitable uses while under the influence of motives arising from the near prospect of death; and with these views the last mortmain act (*l*) was passed.

The act of 9 Geo. 2. c. 36.

As this act governs all present trust-deeds for charitable and religious purposes, it will be proper to state here, rather fully, its provisions. It recites, that "gifts or alienations of lands, tenements, or hereditaments in mortmain, are prohibited or restrained by Magna Charta and divers other wholesome laws, as prejudicial to, and against the common utility; nevertheless this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons, to uses called Charitable Uses, to take place after their deaths, to the disherison of their heirs:" and then enacts, I. "That from and after the 24th day of June, 1736, no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal, whatsoever, or any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out and disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, granted, aliened, limited, released, assigned, transferred, or appointed, or any-ways conveyed, or settled, to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or incumbered by any person or persons whatsoever, in trust or for the benefit of any charitable uses whatsoever, *unless* such gift, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate, (other than stocks in the public funds) be and be made by deed indented, sealed, and delivered in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor or grantor (including the days of the execution and death), and be enrolled in his Majesty's High Court of Chancery, within six calendar months after the execution thereof; *and unless* such stock be transferred in the public books usually kept for the transfer of stocks, six calendar months at least before the death of such donor or grantor (including the days of the execution and death); *and unless* the same be made to take effect in possession, for the charitable use intended,

(*l*) 9 Geo. 2, c. 36.

immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever for the benefit of the donor or grantor, or of any person or persons claiming under him: and II., PROVIDED ALWAYS, that nothing hereinbefore mentioned, relating to the sealing and delivering of any deed or deeds, twelve calendar months before the death of the grantor, or to the transfer of any stock, six calendar months before the death of the grantor, or person making such transfer, shall extend or be construed to extend, to any purchase of any estate or interest in lands, tenements, or hereditaments, or any transfer of any stock, to be made really and *bona fide* for a full and valuable consideration, actually paid at or before the making such conveyance or transfer, without fraud or collusion."

The 3d section enacts, that all gifts made in any other manner than directed by the act, shall be void. The 4th and 5th sections provide that the act shall not extend to make void gifts to or in trust for the universities of Oxford and Cambridge, or the colleges within the same, or the colleges of Eton, Winchester, or Westminster, for the support of the scholars upon the foundation, with an exception which has been since repealed (*m*); and the 5th section enacts, that nothing in the act shall extend to the disposition, grant, or settlement of any estate, real or personal, situate or being in Scotland.

Observations on the above act.

It will be observed, that no gift of land, or of any interest therein, or of any money to be laid out in land, can now be made by *will*, and that all such gifts, when made by *deed*, will become void, if the donor should die within twelve calendar months from the time of the gift, or the deed is not indented, or is not enrolled within six calendar months after its execution, except in cases of purchase for valuable consideration. The precise intention of the legislature, in regard to this exception, cannot be easily collected from the language of the second section; as the words 'donor' and 'grantor' may, in the cases in question, be applied with equal propriety to the purchasers as to the vendors.

The general opinion seems to be, that vendors were intended to be referred to by the words 'donor' and 'grantor,' in the above section; and as the act does not provide that purchased lands shall go to the heir or devisee of the purchaser, in the event of the death of the purchaser within a year after the contract or conveyance, it has been thought that the legislature intended that a party who was capable of making and completing a purchase of land for a charitable purpose, should not be considered as in need of the protection the act was

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(*m*) 45 Geo. 3, c. 101.

designed to throw around dying persons for the benefit of their heirs; and should be at liberty to execute his purpose.

Within the last century a very great number of trust-deeds for charitable and religious purposes have been executed, where, through some misapprehension, or from ignorance or carelessness, the requirements of the act in question have been wholly disregarded; and to obviate the difficulties which might otherwise arise from this neglect, an act has been very lately obtained for confirming such trust-deeds, where they were founded on a valuable consideration, and were made to take effect for the charitable objects immediately, and without any reservation for the benefit of the grantor. This act does not dispense with the requirements of the former statute as regards trust-deeds made after the 25th day of July, 1828; and it would, perhaps, have been more accurate to have made a specific and separate provision in regard to deeds executed prior to that day, but in reference to which the time limited for complying with the requirements of the act of the 9 Geo. II, c. 36. had not then transpired,—as the object of the legislature appears to have been, to remedy deeds which, at the time of passing the act, were incurably defective, and not those which were then capable of being perfected by a future compliance with the provisions of the former act.

The effect of Mr. Hodgkin's act, 9 Geo. 4, c. 85.

The third section seems, however, to extend the act to *all* deeds *executed* prior to the passing of it, and consequently to dispense with the formalities required by the former act, even in regard to assurances made so short a time before the passing of the last act, that they might properly have been placed on the same footing with deeds executed immediately after the passing of the act.

A variety of legislative enactments have been made for the regulation of workhouses, and maintaining the poor, and for establishing and regulating friendly societies, hospitals, and other charitable institutions; but the consideration of them does not seem proper in this place.

Charities under the care of the chancellor, as keeper of the King's conscience.

The king, as *parens patria*, has the general superintendence of all *charities*, which he exercises by the keeper of his conscience, the chancellor; and therefore whenever it is necessary to have a charity properly established, or any abuses removed or rectified, the attorney-general, at the relation of some informant, who is usually called the *relator*, files an *ex officio* information in the court of Chancery, praying the chancellor's direction or interference. No information can, however, be brought in Chancery for such charities as are considered

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(*n*) 9 Geo. 4, c. 85. The profession and the public in general are, it is believed, in a great degree indebted to Mr. Hodgkin for this very beneficial statute. It is often referred to as his act.

superstitious uses, and which by different statutes are given to the king; nor can the court of Chancery give relief against the King, or direct him to do any act, or make any decree or order affecting any property which may become vested in him, subject to a trust for a charity, since such cases can only be determined in the court of Exchequer as a court of revenue (*o*). By the statute 52 Geo. III, c. 101, Equity has jurisdiction over all charities, for the purpose of administering the funds, even though the charity be created by royal charter, provided the application does not extend to regulate or alter the charity; in which case the crown only can interfere by virtue of its visitorial power (*p*).

The statute of the 52 Geo. 3, c. 101.

Money bequeathed to repair a free chapel, has been held to be not within the Statute of Mortmain;—the money not being to be laid out in land, but only to be expended in support of what was already in mortmain (*q*). The same has also been held where money was given to repair parsonage houses, or to build a parsonage house at the bottom of the parson's garden (*r*). In another case (*s*), where a testator directed the dividends of a sum in the funds to be applied for or towards establishing a school, and declared that the master should have a salary of not less than 30*l.* per annum, and that the surplus dividends should be applied in buying books, fire, clothes, and other necessaries for the children, and placing them out as apprentices; the Court directed the master to approve of a scheme, but ordered that it should not include the application of any part of the dividends to the purchase or renting of land;—the Lord Chancellor (Loughborough) observing, that the master might teach in his own house, or in the church. Where, however, the bequest is to erect a charitable foundation, or to build a chapel or a schoolhouse, or the like, it has been held, that the words '*erect*' and '*build*' imply a purchase of lands; and the bequests have therefore been decided to be void under the mortmain act (*t*).

Bequests of money to build on land already in mortmain, are valid.

But a bequest to *erect* or to build a charitable foundation, implies a purchase of land, and is void.

(*o*) 3 Bla. Com. 429.

(*p*) *In re Chertsey Market*, 6 Price, 474. Daniel, 261. *Exparte Berkhampstead School*, 2 Ves. & Bea. 134. *Attorney General* v. *Foundling Hospital*, 2 Ves. jun. 42. *Attorney-General* v. *Dixie*, 13 Ves. 510.

(*q*) *Harris* v. *Barnes*, Amb. 651.

(*r*) *Attorney-General* v. *Bishop of Chester*, 1 B. C. C. 444. *Brodie* v. *Duke of Chandos*, ibid. (n).

(*s*) *Attorney-General* v. *Williams*, 4 B. C. C. 526.

(*t*) *Vaugham* v. *Farrer*, 2 Ves. sen. 187. *Attorney General* v. *Bowles*, 2 Ves. jun. 547. *Attorney-General* v. *Hyde*, Amb. 752. *Chapman* v. *Brown*, 8 Ves. jun. 404. *Attorney-General* v. *Parsons*, 8 Ves. jun. 191. *Attorney General* v. *Nash*, 3 Bro. C. C. 588. *Attorney-*

In a late case, a sum of money was bequeathed to *erect* a Blue-coat School, and establish a Blind Asylum, at Manchester; but the testator expressly directed that the monies should not be applied in the purchase of lands or the erections of buildings, it being his expectation that other persons would, at their own expense, purchase lands and erect buildings for those purposes; and it was therefore held that the bequest was not void (*u*).

Money on mortgage in England given to a charity in Ireland, is not within the statute (*v*). Neither is a sum of money, to be laid out in the purchase of heritable securities in Scotland, for the use of a religious society in Scotland, within the statute (*w*); nor does the act extend to real estates in the island of Grenada in the West Indies, or in the other colonies (*x*).

On the transfer of a mortgage for a charitable purpose, the mortgage should be considered as real estate in reference to mortmain.

Though a mortgage is considered in equity as personal estate, yet it has been held that a devise of a mortgage for a charitable use is void by the statute; the words being, that no lands shall be conveyed or settled for any estate or interest whatsoever, or be anyways charged or incumbered, in trust for or for the benefit of any charitable use: and it would therefore seem, that any transfer or assignment of a mortgage for charitable purposes, would be also void, unless, in reference to the deed of transfer, the provisions of the act were complied with.

Practical direction in preparing deeds for charitable purposes.

In preparing deeds for charitable purposes, great care should be taken, to see that the provisions of the mortmain act are duly complied with, and that the objects of the charity, and the powers intended to be vested in the trustees, are clearly defined, and that due provision is made for the change of trustees.

Freeholds.

Where freeholds are given or conveyed for charitable purposes, it is rather more common to make the conveyance by bargain and sale, though the lease and release are often used.

Leaseholds.

As the statute requires that the grantor or donor of any land settled to charitable uses shall not reserve thereout any estate, interest, or benefit to himself, a leasehold interest in houses or lands cannot be settled by *demise*, though, through ignorance or inattention, this has often been attempted to be done. When a leasehold interest is wished to be

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General v. *Worwood*, 1 Ves. sen. 534. *Morice* v. *Bishop of Durham*, 10 Ves. jun. 534.

(*u*) *Henshaw* v. *Atkinson*, 3 Madd. 306.

(*v*) *Campbell* v. *Earl of Radnor*, 1 Bro. C. C. 272.

(*w*) *Oliphant* v. *Hendrie*, 1 Bro. C. C. 571. *Mackintosh* v. *Townsend*, 16 Ves. 330.

(*x*) *Attorney-General* v. *Stewart*, 2 Meriv. 143.

settled, the proper course is to get some person who can be depended on to take the lease in his own name, without any trust whatever, and then to take from such person an assignment of the property to the intended trustees of the charity, upon the trusts agreed to be declared thereof. In the assignment to the trustees, care must be taken not to treat the assignor as a *trustee* for the charity, as that would invalidate the lease. He should assign the property as, and should in fact be, the real and absolute owner of it; and in general it is best for him to make the assignment to the trustees as *purchasers*, in order that the deed may not become void, by the death of the assignor within a year from the date of it. By this plan a double *ad valorem* duty will be payable,—one on the *lease*, and the other on the *assignment*; but in most cases this cannot well be avoided, and it will be better to incur the expense than take the risk of the life of the assignor; more particularly where buildings will be erected almost immediately after the assignment.

Copyholds.

Before the statute 9 Geo. II. c. 36, it was resolved, that copyholds might be charged or given to charitable uses (*w*); but that statute enacting that all conveyances of any manors, lands, &c. should be made by deed, indented, sealed, and delivered twelve months before the death of the donor, and enrolled in Chancery six months after its execution, it became a question whether copyholds were within the act, as they pass by surrender in or out of court, and not by bargain and sale, or any other private conveyance inrolled (*x*). It has, however, been lately decided in the Court of King's Bench, that a conveyance of copyholds to charitable uses in the life time of the party, is within the above statute, and therefore may be made, the formalities required by that statute being complied with (*y*). The proper mode of conveyance of copyholds in such cases seems to be, to surrender the copyholds to such uses as the donor shall appoint, and then to declare the uses by an indenture executed conformably to the 9 Geo. II. c. 36, and to cause such deed to be inrolled in Chancery (*z*). In the last mentioned case Mr. Justice Holroyd said, "It appears to me that copyhold lands are within the mischief intended to be remedied by the statute 9 Geo. II. c. 31; and if so they fall within the rule of law, which says, that cases within the mischief of a statute, shall be held to be included in the general words of it. And although a copyhold must pass by sur-

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(*w*) *Ranson's case*, Duke Cha. Us. 361, last edit.

(*x*) *Brown* v. *Ramsden*, 2 J. B. Moore, 612—619.

(*y*) *Doe* d. *Howson* v. *Waterton*, 3 Barn. and Al. 149; see also *Arnold* v. *Chapman*, 1 Ves. sen. 103.

(*z*) *Doe* d. *Howson* v. *Waterton*.

render, and not by bargain and sale, yet it is clear that the uses of the surrender may be declared by deed indented and enrolled."

According to a note of Mr. Preston's to a form of a trust-deed, prepared by him, at the request of the deputies appointed to protect the civil rights of the protestant dissenters (see *post*, p. 441), it seems, that he recommends the surrender to be made out of court, and for the memorandum of such surrender to be made in the form of an indenture, and to be executed in the presence of two witnesses, and inrolled in Chancery.

The legal meaning of the word 'Charity.'

In the case of *Morice* v. *The Bishop of Durham*, will be found a learned exposition of the legal meaning of the word "Charity," and what objects can properly be considered charitable, and as such administered by the court of Chancery. They are stated to be of four kinds; first, for the relief of the indigent, which may be in a variety of ways, as by giving money, furnishing provisions or habitation, or affording instruction, medical advice, &c.; second, the advancement of learning; third, the advancement of religion; and fourth, the advancement of objects of general public utility. The last description is the most difficult to define, but many of them are enumerated in the statute of Elizabeth before referred to (*a*).

Conveyances for the of protestant dissenters, are held to be for charitable uses.

The religious persuasions or opinions of protestant dissenters being now tolerated by law, a grant for the purpose of supporting a chapel for public worship among such dissenters, is held to be for a charitable use within the meaning of the statute of mortmain, 9 Geo. II. c. 36 (*b*), and, consequently, if the trust-deed is not executed and enrolled in conformity with the provisions of that statute, it will be void. Thus in the case of *Doe* d. *Wellard* v. *Hawthorn*, where one Joseph Wellard being possessed for a term of years of a piece of land at Dartford in Kent, on which a chapel had been erected at his expense, did, in consideration of a sum of 400*l.*, expended in enlarging and improving the same, by different persons who had subscribed thereto, lease the same land and chapel to twelve persons, for a lesser term, at a rent of a pepper-corn during his life, and afterwards at a rent of 10*l.* for the remainder of the term; and the trustees, by a deed endorsed on the lease, declared that they would stand possessed of the land and chapel or meeting-house for the remainder of the term, in trust for the use and benefit of the society or congregation there assembling at the chapel or meeting-house, and maintaining certain religious doctrines in the deed mentioned, and neither the lease nor the deed endorsed were enrolled; it

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(*a*) See *ante*, p. 294; also Duke Cha. Us. p. 131.

(*b*) *Doe* d. *Thompson* v. *Pitcher*, 3 M. and S. 407; 6 Taunt. 359; 2 Marsh. 61; *Doe* d. *Wellard* v. *Hawthorn*, 2 B. and A. 96.

was held in an action of ejectment afterwards brought by the lessee of Wellard to recover possession of the premises, that the lease was void, and that the plaintiff was entitled to a verdict.

In the absence of a special provision, general usage will guide the courts in appointing ministers over dissenting congregations.

Most well drawn trust-deeds for establishing dissenting chapels or meeting-houses, contain express provisions for the appointment and removal of the minister and other officers; and the courts of law and equity will assist the exercise of the powers reserved. In the absence of any special covenant, agreement, or provision in the trust-deed, the general *usage* of protestant dissenters of the same denomination, or in the same communion, must furnish the rules of proceeding in the election of ministers, and in their admission to, and removal from office (*d*).

The principle of public policy recognized by the established church in making the appointment of its ministers an appointment for life, does not extend to the case of dissenters; and therefore a court of equity will sanction the appointment of a minister over a congregation for a less and limited period, if such be agreeable to the usage of the members, or in accordance with the provisions of the original trust (*e*).

It may also be observed, that where a trust-deed invests certain individuals with an authority, *quasi* visitors, to dismiss or suspend a regularly appointed minister *at their own free will and pleasure*, the courts will not interfere, however improper the dismissal or suspension may be. But if it be provided that such dismissal or suspension shall be according to specified rules, constitutions, and regulations, the courts will be satisfied that those rules, constitutions, and regulations, have been duly attended to, before they will lend their assistance to carry the decision of the trustees or visitors into effect (*f*). Where the power of removal is not given to any particular part of a society, it rests with the society at large (*g*).

Equity will not allow a congregation to change the form of worship or doctrines, contrary to the original design of the institution.

Where a trust is created for religious worship, and it appears to have been the founder's intention that a particular doctrine should be preached, it is not in the power of the trustees, or of the congregation, to change the original design of the institution. And where money is raised by subscription, or otherwise, in order to purchase land, or a meeting-house, to be devoted to religious worship, the property so purchased must be applied to those purposes agreeably to the religious opinions of the persons who raised the money, and cannot be devoted

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(*d*) *Attorney General* v. *Pearson and others*, 3 Meriv. 403; *Rex* v. *Sotham*, 3 T. R. 577.

(*e*) *Ibid.*

(*f*) *Attorney-General* v. *Alexander Fletcher*, not reported.

(*g*) 8 T. R. 356. 2 Str. 819.

to a different purpose, even with the consent of the majority of those persons (*h*). It is also clear, that under a clause enabling trustees to make orders relating to a dissenting chapel, a new form of worship and different doctrines cannot be introduced (*i*).

If land or money be properly given for maintaining "the worship of God," without any qualification, the court will execute the trust in favour of the established religion of the country; but if it be expressed that the object of the gift is to maintain dissenting doctrines, the court will execute the trust accordingly, so far as it can be done consistently with law (*k*). If any enquiry into the facts of a case is necessary, they will be ascertained by a reference to the master in the usual way.

Dissenters' meeting houses for worship must be certified and registered.

Places of public worship by protestant dissenters must be certified and registered according to the toleration acts (*n*). No assembly for religious worship is allowed under these acts until the place of such meeting is certified, either to the bishop of the diocese, the archdeacon, or the justices at the general or quarter sessions for the county or city, &c. and registered in the bishop's or archdeacon's court, or recorded at the sessions. And under the last act, the registrar, or clerk of the peace, is required to register the same, and to give a certificate thereof to such person as shall demand it, taking no greater fee than 2*s*. 6*d*.

It seems that a certificate of a place being appointed for religious worship may be delivered in by any person (*o*).

In case the bishop's registrar (*oo*), or the justices at the quarter sessions (*p*), refuse to register or record such certificate, they may be compelled by *mandamus*—the court of quarter sessions being merely ministerial. An action will lie for a false return to the mandamus, and all who sue for it should join; but the action should be in the King's Bench, in order to have a peremptory *mandamus* (*q*).

By the 52 Geo. III. c. 155. s. 2. it is enacted, that every person who shall knowingly permit any congregation to meet in any place occupied by him until the same shall have been duly certified, shall forfeit, for every time such congregation shall meet contrary to that act, not less than 20*s*. nor more than 20*l*., at the discretion of the ustices convicting for such offence.

(*h*) *Attorney-General* v. *Pearson, ubi supra.*
(*i*) *Ibid.* (*k*) *Ibid.*
(*n*) 1 W. & M. c. 18; 52 Geo. 3. c. 155. s. 2.
(*o*) *Green* v. *Pope,* 1 Lord Raym. 125. (*oo*) *Ibid.*
(*p*) *The King* v. *The Justices of Derbyshire,* 1 Bl. 606.
(*q*) 1 Lord Raym. 125.

Provisions of the act 52 Geo. 3. c. 155.

Every person who shall teach or preach in any congregation in any place without the occupier's consent, shall forfeit for every offence not less than 40*s.* nor more than 30*l.*, at the discretion of the justices who shall convict for such offence (*r*).

All preachers in, and persons resorting to, any congregations or assemblies for religious worship duly certified under the above acts, are exempt from all penalties imposed by any acts relative to religious worship, in the same manner as persons taking the oaths under the statute 1 W. & M. c. 18 (*s*).

No meeting or congregation for religious worship shall be held in any place with the door locked, bolted, or barred, or otherwise fastened, so as to prevent any persons from entering during the time of such meeting. And the minister officiating therein shall forfeit for every time the door shall be so fastened, not less than 40*s.* nor more than 20*l.*, at the discretion of the justices convicting for such offence (*t*).

By the 1st of W. & M. c. 18. s. 18, it is enacted, that any person who shall willingly and of purpose, maliciously, or contemptuously, *come into* a chapel or other congregation permitted by the act, and disquiet or disturb the same, or misuse any preacher or teacher; upon proof thereof before any justice of the peace by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of 50*l.*; or in default of such sureties, be committed to prison till the next general or quarter sessions; and upon conviction at the sessions, shall forfeit 20*l.* to the King.

The offence provided for, and the penalty imposed by this act, have been beneficially extended in favor of the protestant dissenters by the 52 Geo. III. c. 155. The *former* statute merely went to protect them from being disturbed during divine service by persons *coming into* their meetings and molesting them; but by the latter statute it is enacted, that if any persons shall at any time thereafter wilfully and maliciously or contemptuously disquiet or disturb any congregation assembled for religious worship under this or any other act, or shall in ANY WAY *disturb, molest, or misuse any officiating minister of such congregation, or any persons there assembled,* the offenders, on proof thereof before any justice, by two or more credible witnesses, shall find two sureties, to be bound by recognizances in the penal sum of 50*l.* to answer for such offence; and that in default of such sureties the offenders shall be committed to prison until the next general or quarter sessions; and on conviction of the said offence at such sessions, they shall suffer the penalty of 40*l.*

(*r*) 52 Geo. 3. c. 155. sect. 3.
(*s*) 52 Geo. 3. c. 155. sect. 4.
(*t*) 52 Geo. 3. c. 155. sect. 12.

Where any profit is made of a place of worship, by letting pews or seats, or where it is inhabited as a dwelling house, it is rateable to land tax and to parochial and assessed taxes; but not otherwise (*u*). Where meeting-houses are liable to taxes.

A rate made upon the minister (*v*) or the trustees (*w*) for a meeting-house, of which no profit is made, cannot be supported. They are not to be considered as beneficial occupiers. Neither, it seems, are pew-holders, any more than patients in a hospital (*x*).

If profits are made of a chapel or other building for charitable purposes, whether they be annual and certain or contingent and varying, as by letting pews, or in any other way; whoever makes that profit, whether the trustee or the minister, may be considered a beneficial occupier of the chapel or other building, and is rateable to the poor in respect of it. And if pews are let to trustees in whom the property is vested, they are deemed to make a profit of the rent, and are rateable for it, although the expenditure of the trust should exceed its income;—the subsequent disposition of the rent being considered altogether a matter of private arrangement (*y*).

Where a chapel is solely used for charitable and religious purposes, and no pecuniary advantage arises from it to any one, although a part of it be inhabited by a door-keeper, and other persons, supported out of a voluntary fund, no one is considered to have such a beneficial occupation as to subject the property to the poor rates (*z*).

The objects of a charity in the actual occupation of almshouses, paying no rent for the same, and removable at the pleasure of the patrons of the charity, are rateable to the relief of the poor in respect of such occupation (*a*).

The canons of the church forbid all persons to teach or instruct youth without a license from the ordinary, and subscription to a declaration of conformity, and also to keep a school in a country town where a public school is already founded; and a variety of statutary enactments have been made, prescribing the qualifications necessary to Regulations as to school-masters.

(*u*) *Rex* v. *Woodward*, 5 T. R. 79.

(*v*) *The King* v. *St. Thomas, Southwark*, Str. 745.

(*w*) 5 T. R. 79.

(*x*) See 2 Burr. 1053, and 4 Burr. 2435, as to trustees and patients of a hospital.

(*y*) *Rex* v. *Agar*, 14 East, 256; *Jones* v. *Mansell*, Doug. 302. *Rowls* v. *Gells*, Cowp. 451; 1 Nolan's Poor Laws, 182, 138; and cases there collected.

(*z*) *Rex* v. *Woodward*, ubi supra.

(*a*) *The King* v. *Ann Green and others*, 9 B. & C. 203.

enable protestant dissenters to exercise the profession of a schoolmaster (*b*).

On the subject of Charitable Uses, see further,—the Digests of Bridgman and Viner, Burn's Ecclesiastical Law, and Fonblanque on Equity; also the recent decisions referred to below (*c*).

Where a conveyance for payment of debts is considered voluntary, and where not.

III. *Trust-Deeds on arrangements between Debtors and Creditors.*—A conveyance for the payment of debts generally, to which no creditor is a party, and where no debts are specified, has been long held to be a voluntary conveyance (*d*); and, as against a subsequent purchaser without notice, a fraudulent conveyance within the statute of Elizabeth (*e*).

Where the creditors are parties to the conveyance and the debts are specified, the conveyance will in most respects be similar to a mortgage, and unless the security is made for the benefit of more than five persons the deed will be liable to a mortgage *ad valorem* duty stamp on the amount secured. This, however, is only the case where the creditors execute the deed; for in a late case, where the debts were scheduled and the creditors were made parties to the conveyance, but did not execute it, it was held that the conveyance must be considered purely voluntary (*f*). The circumstances of this case were as follows:—

The case of *Garrard* v. *Lord Lauderdale.*

By an indenture dated the 22d June, 1822, and expressed to be made between the late Duke of York, of the first part; the defendants, Lord Lauderdale, and B. C. Stephenson, Esq. of the second part; and the several persons whose names were mentioned in the schedule to the deed as creditors of the Duke, in the sums set opposite to their names,

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(*b*) See Canons, 77—137, 13 and 14 Charles II. c. 4; Carth. 464; Burn's Eccl. Law, Gibson, 1110; 1 Phil. Ev. 185; 2 Phil. Ev. 458.

(*c*) *Attorney General* v. *Munby*, 1 Mer. 327; *Attorney General* v. *Stewart*, 2 Mer. 143; *James* v. *Allen*, 3 Mer. 17; *Attorney General* v. *Gaunt*, 3 Swanst. 148; *Attorney General* v. *Hinxman*, 2 Jac. and Walk. 270; *Attorney General* v. *Hartley*, ibid, 353; *Attorney General* v. *The Master and Fellows of Catherine Hall, Cambridge*, Jac. 381; *Attorney General* v. *Buller*, ibid, 407; *Attorney General* v. *Vivian*, 1 Russ. 326; *Attorney General* v. *Corporation of Exeter*, 2 Ross, 45; *Attorney General* v. *Earl of Mansfield*, ibid, 511; *Attorney General* v. *Lull*, 3 Russ. 328; *Pritchard* v. *Arbouin*, ibid, 456; *Ingleby* v. *Dobson*, 4 Russ. 342.

(*d*) *Leech* v. *Leech*, 1 Cha. Ca. 249; *Wallwyn* v. *Coutts*, 3 Meriv. 707; and (where it is much more accurately reported) 3 Sim. 14; *Page* v. *Broom*, 4 Russ. 6.

(*e*) 27th c. 4, made perpetual by the 30th Eliz. c. 18, s. 3.

(*f*) *Garrard* v. *Lord Lauderdale*, 3 Sim. 1.

of the third part; the Duke assigned to the defendants his furniture, plate, live and dead stock, growing crops, and other effects at Oatlands, upon trust to sell the same, and to pay certain tithes, rates, and taxes, and also a debt of 1138*l.* due to M. P. Romano, and the costs of getting in the crops, and carrying on the farm until the 1st of November then next, and to divide the residue of the monies arising from the sale amongst the several creditors of the Duke, parties to the deed, in proportion to the amount of their respective debts. The defendants sold the property assigned to them, and received the proceeds. The plaintiff, one of the creditors mentioned in the schedule, not having been paid his debt, filed a bill (on behalf of himself and the other unsatisfied creditors of the Duke who were entitled to the benefit of the assignment) against the defendant, charging that he and the other creditors did, in consideration of the deed having been executed in their favour, and on the faith of the provisions thereby made for their debts, forbear to sue the Duke, and that thereby the deed was founded on a good and valuable consideration, and was binding on the Duke and the defendants, and therefore praying that the necessary accounts might be taken, and that the trusts of the deed might be carried into execution. The defendant Stephenson by his answer said, that neither the plaintiff, nor any of the other creditors, executed the deed; that it was executed by the Duke, without their knowledge, privity, or concurrence, and was altogether voluntary and without consideration on his part; that the trustees had, out of the trust property, paid the tithes, taxes, and rates mentioned in the schedule, and the debt due to Romano; that they had, by the express direction of the Duke, paid five sums, amounting together to 1653*l.* to or for the use of the Duke; and that, though he did not repay them those sums, he had, out of his own monies, paid several of the creditors the whole or part of their debts, amounting together to the like sum; and, therefore, that if the deed was irrevocable, the Duke's personal representatives were entitled to stand in the place of those creditors, to the extent of that sum; that the Duke, by calling for or directing payment of the five sums before mentioned, had revoked the deed to the extent of those sums; that the defendants had been advised that it was doubtful whether they ought not to hold the balance in their hands, in trust for the Duke's personal representatives, and that they had, for that reason, abstained from making any distribution of it amongst the creditors; that the plaintiff, previously to the execution of the deed, did make some very urgent applications to the Duke, through the defendant Stephenson, (who was then acting as the Duke's agent) for the payment of his debt, and that the plaintiff's solicitor wrote a letter to the defendant peremptorily demanding payment, and threatening proceedings at law in case of a refusal. The defendant denied that the indenture was

an inducement and consideration to the plaintiff and the other creditors to forbear to sue the Duke, and said that though the plaintiff and some of the creditors did not, yet others of them did sue the Duke, for their debts.

A motion being made for the plaintiff, that the defendants might be ordered to pay into court the balance admitted to be in their hands, the Vice Chancellor held it to be clear, that as the creditors did not execute the deed, they had no right to enforce it, and refused the motion with costs; and this decision was, on appeal, affirmed by the Lord Chancellor. On the subject of voluntary deeds, the reader will find several important cases referred to in Mr. Swanston's note to *Gordon* v. *Gordon* (*g*), and in Sir Edward Sugden's work on Vendors and Purchasers (*h*), and in the notes to the preceding title (*i*).

Composition deeds by persons not in trade.

Deeds of arrangement with creditors are often entered into by private persons out of trade, who have lived in a style of expense beyond what their incomes would justify, or who have met with some heavy pecuniary disappointments; and in these cases the more usual provision is to set aside part of the debtor's income to liquidate the debts, and keep on foot an insurance on the debtor's life, for a sum which will cover the amount of the debts, in case they should not be paid in the debtor's lifetime, and to declare appropriate trusts of the fund so set apart, and also of the monies secured by the insurance. But almost every case is someway peculiar in its circumstances, and the proper provisions of the arrangement must necessarily depend on them.

When a trader is embarrassed he usually becomes a bankrupt or makes a composition.

In the majority of cases where an arrangement with creditors is necessary, the debtor is in trade, and the question between the parties then is,—whether the affairs shall be wound up privately, and under the care and inspection of mutual friends, or the effects of the debtor shall be disposed of amongst the creditors, under the provisions of the bankrupt law. Where the affairs of the debtor are much involved, and the amount of the debts very greatly exceeds the probable amount of the estate when converted into money, it is usual to have recourse to a bankruptcy; but when the debtor is anxious to avoid the disgrace (*k*)

(*g*) 3 Swanst. 400. (*h*) p. 649, 8th edit.

(*i*) SETTLEMENTS.

Bankruptcy formerly considered a crime.

(*k*) Formerly a bankrupt was considered merely in the light of a *criminal*, and it is greatly to be regretted that from the frequency of bankruptcy during the last thirty years, a person suffers scarcely any thing in the public estimation by becoming a bankrupt. This, however, is not the place to indulge in invective against the abominations which are daily committed by means, or under the name of *trade*, and which are unvisited by punishment in consequence of the bankrupt law.

of being a bankrupt, and to make his property as available for the benefit of his creditors as possible, a private arrangement with the creditors is generally made.

What are the most usual arrangements.

Sometimes all the estate is assigned to two or more of the creditors, as trustees for all parties, with power to sell it or otherwise convert it into money, and (after discharging the trust expenses) to divide the money among the creditors, rateably and in proportion to the amount of their debts, and without any preference or priority, and in case of a surplus to pay it to the debtor; and in consideration of the assignment, the creditors either release the debtor from their debts, or covenant that in a given time, and under given circumstances, they will execute such a release, and that until a release can be required, or the right to it shall be forfeited, they will not sue or molest the debtor. In other cases some friends or relations of the debtor come forward and offer a composition on the debts, and guarantee, by bills of exchange or otherwise, the payment by instalments of the amount of such composition, and a release is given, or an agreement to release when the last instalment on the composition is paid, is then entered into. In many other cases, no assignment or composition is made, but it is stipulated that the trade of the debtor shall be continued to be carried on by the debtor, under the care, superintendence, and controul of two or more of the creditors who are named for that purpose by the others, and who are commonly called *Inspectors*, and the proceeds of the business are made distributable amongst the creditors, nearly as in the case of an assignment of the debtor's effects.

Persons not in trade, may assign their property for the benefit of creditors, so as to give a preference, but traders may not do so.

Such an assignment by a trader is an act of bankruptcy.

It is clear that a person who is *not* in trade may convey or assign all his property to trustees for the benefit of all his creditors, or of any of them, in exclusion of any other or others of them, and so as to give a preference to any one or more of them, over the other or others of them (*l*); but such assignments, when made by a *trader*, are considered as a fraud upon the policy of the bankrupt law, and therefore void; and such an assignment is deemed an act of bankruptcy (*m*). It is easy to perceive why an assignment of a trader's effects to trustees for the benefit of one, two, or more of the creditors, to the exclusion of the others, or even of all except one, to the exclusion of that one, should be considered fraudulent and void, since the necessary consequence of such an assignment is the injury of the excluded

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(*l*) *Enwick* v. *Calland*, 5 T. R. 424. *Inglis* v. *Grant*, ibid, 530. *Nunn* v. *Wilsmore*, 8 T. R. 528. *Meux* v. *Howell*, 4 East, 1. *Picklock* v. *Lyster*, 3 M. & S. 371. *Goss* v. *Neale*, 5 Moore, 19.

(*m*) *Kettle* v. *Hammond*, Cooke's B. L. 100. *Echardt* v. *Wilson*, 8 T. R. 140. *Exparte Foord*, cited 1 Burr. 477. *Wilson* v. *Day*, 2 Burr. 827.

creditor or creditors; but it is not easy to comprehend how an assignment of the whole of the trader's property for the immediate payment and benefit of *all* the creditors, should be deemed fraudulent (*n*). The reasons generally assigned are, that the trader by such an act, necessarily deprives himself of the means of carrying on his trade, and thereby produces insolvency; and that the transaction tends to overturn the provisions of the bankrupt law, by investing persons of the parties own choice with the management and disposal of the trader's property, instead of persons chosen by the creditors under the direction of commissioners, and the superintendence and controul of the great seal, and so removing the property out of the reach of the general creditors (*o*).

A mere colourable exception is not allowed.

It is also to be observed, that a mere colourable exception of a small part of the trader's estate will not alter the case. Thus a mortgage by a trader of *all his stock in trade*, except his household goods, and furniture, and debts, which were of trifling value and amount, has been held to be fraudulent, and to constitute an act of bankruptcy (*p*); and any assignment of a trader's stock and effects, which would disable him from carrying on his trade, would also be deemed an act of bankruptcy (*q*).

But a partial assignment will in some cases be permitted.

Though an assignment by a trader of such a portion of his effects as will necessarily render him unable to go on with his trade, or operate to produce insolvency, will be considered an act of bankruptcy, any other partial assignment in favor of a creditor, either for securing past debts, or present or future advances, will be good, unless it can be shewn to be in contemplation of bankruptcy (*r*). Such partial assignment does not in itself imply any evidence of fraud. Whether a debtor, at the time of delivery or assignment of any of his effects to a creditor, does or does not contemplate bankruptcy, is a question which must be decided by a jury. That he does contemplate bankruptcy, is not always to be inferred from the circumstances of the trader being such that he cannot but consider it probable that he must

Whether an assignment be or be not made in contemplation of bankruptcy, must be decided by a jury.

(*n*) *Kettle* v. *Hammond*, ubi supra. *Echardt* v. *Wilson*, ubi supra. And see 2 Burr. 831.

(*o*) *Worsley* v. *Demattos*, 1 Burr. 477.

(*p*) *Law* v. *Skinner*, Bl. Rep. 996.

(*q*) Bl. Rep. 442. See also *Berney* v. *Davison*, 1 Bro. & Bing. 408. 4 J. B. Moore, 126. *Berney* v. *Vyner*, 1 Bro. & Bing. 482. 4 J. B. Moore, 322.

(*r*) *Wheelwright* v. *Jackson*, 5 Taunt. 101. *Fidgeon* v. *Sharp*, ibid, 539.

discontinue his trade unless time be afforded him by his creditors. In one case, where a trader had purchased goods for exportation, but afterwards seeing no prospect of advantage in sending them out, and finding that he must stop payment unless his creditors would give him time, restored the goods to the vendors while an arrangement for the creditors giving time was being made, and no expectation was entertained by him but that a bankruptcy would be thereby avoided, the court held that the jury were warranted in finding that the redelivery of the goods was not made in contemplation of bankruptcy (*s*).

When a trader is embarrassed in his circumstances, he compounds.

When a trader becomes embarrassed in his circumstances, it is usual for him to enter into a deed of composition with his creditors, or to get some creditor to make him a bankrupt, or if he cannot do either, to go to prison and take the benefit of the acts passed for the relief of insolvent debtors in prison.

Distinction between the effect of a discharge under the bankrupt act, and the insolvent debtors' act, as to subsequently acquired property of the debtor.

It is not proposed in this place to enter into a consideration of the bankrupt law, or of the law relating to insolvent debtors; but it seems proper to remind the reader that by a discharge under the bankrupt law the debtor will be entitled to any estate or effects which he may acquire after obtaining his certificate, except where he has been previously a bankrupt or insolvent, and does not, on the second occasion, pay fifteen shillings in the pound on the debts proved (*t*); but that by a discharge under the Insolvent Debtors' Act the future effects of the debtor will still remain liable to the payment of his debts, and his person only will be freed from arrest and imprisonment (*u*); and that where an act of bankruptcy has been concerted between the bankrupt and the petitioning creditor, it shall be of no avail as against persons not privy or assenting to it (*v*); and that a commission founded upon a concerted act of bankruptcy, or taken out at the instance of the bankrupt, will be superseded, even though the bankrupt may have obtained his certificate under it (*w*). It is, however, no objection to an act of bankruptcy, that the trader has been advised to have recourse

Concerted bankruptcy not allowed, except where a commission is founded on a declaration of insolvency.

(*s*) *Fidgeon* v. *Sharp*, *ubi supra*, and 1 March. 196.

(*t*) 6 Geo. IV. c. 16, s. 127.

(*u*) 7 Geo. IV. c. 57, s. 58, 59, 60.

(*v*) *Field* v. *Billumy*, Bull. N. P. 79; *Hooper* v. *Smith*, 1 Bl. Rep. 441; *Bamford* v. *Baron*, 2 T. R. 594; *Eyre* v. *Birbeck*, *ibid.*; *Tappenden* v. *Burgess*, 4 East, 230.

(*w*) *Exparte Moule*, 14 Ves. 602; *Exparte Binner*, 1 Madd. 250; *Exparte Staff*, Buck. 249, 431; *Exparte Grant*, 1 Gly. and Ja. 17; *Exparte Prosser*, Buck. 77; *Exparte Brookes*, 257.

to it by a friend, provided the party so advising be not the agent or attorney of the petitioning creditor (*x*); and it is expressly provided by the last bankrupt act (*y*), that no commission founded upon a declaration of insolvency filed at the bankrupt office, shall be deemed invalid by reason of such declaration having been concerted or agreed upon between the bankrupt and any creditor or other person.

The principal objections to deeds of composition before the late bankrupt act.

Arrangements between debtors and creditors by deeds of composition have been very frequent, although prior to the last bankrupt act they were open to serious objections. The principal of these objections were, that owing to the secrecy or privacy of the arrangements, old creditors were often paid at the expense or to the prejudice of the new ones; that such arrangements being generally acts of bankruptcy, any creditor might, by remaining outstanding, defeat the arrangements, and annul all proceedings under them; and that, on account of its being always uncertain whether all the creditors had concurred, purchasers under such deeds could never be considered as perfectly safe, or their titles free from doubt. By the fourth section of the late act it is now provided, that a trust-deed for the benefit of all the creditors of a trader shall not be deemed an act of bankruptcy, unless a commission issue within six months; and, consequently, if no commission issue within that time, a creditor deed may be afterwards considered as unimpeachable, and the trusts thereof may be then carried into execution with safety, as well in reference to the trustees of the deed as to any purchasers under it. Till the six months have expired, trust-deeds must be considered as still open to the objections referred to; but the trustees may begin to act as soon as they are satisfied that the creditors who have not executed the deed, or otherwise agreed to concur in the arrangement, are not able individually or collectively (*z*) to sue out a commission.

Caution as to preventing deed of composition being an act of bankruptcy.

Sometimes, to guard against the danger of the assignment being treated as an act of bankruptcy, the debtor is advised not to execute the deed till a sufficient number of the creditors have executed it, to secure the arrangement being carried into effect. In other cases, it is recommended that the debtor should not make any *assignment* of his effects, but merely agree to wind up his affairs himself, under the controul and superintendence of two or three of the principal creditors,

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(*x*) *Roberts* v. *Teasdale*, Peake, N. P. C. 27; *Proper* v. *Smith*, N. P. C. 442.

(*y*) Sect. 7.

(*z*) The debt of the petitioning creditor or creditors must amount, if due to one person or firm, to 100*l.*; if due to two persons or firms, to 150*l.*; and if due to three or more persons or firms, to 200*l.*

as such an agreement is considered, according to *Beracy* v. *Vyner* (*a*), as not amounting to an act of bankruptcy. It would also seem, that if the deed be not executed in *England*, it will not be an act of bankruptcy within the meaning of the statute (*b*).

A party to a deed cannot set it up as an act of bankruptcy.

Any creditor who has been privy to, or acted under a deed of composition, cannot afterwards set it up as an act of bankruptcy; and, of course, a creditor who has executed the deed, cannot do so (*c*); but a suit by assignees is not open to objection on account of their being privy to the deed of composition constituting the act of bankruptcy on which the commission rests, in case the petitioning creditor was not a party or privy to it (*d*).

32d section of 7 Geo. 4. c. 57.

It is also proper to notice, that by the insolvent debtors' act it is provided by the 32d section, "That if any prisoner who shall file his or her petition for his or her discharge under this act, shall, before or after his or her imprisonment, being in insolvent circumstances, voluntarily convey, assign, transfer, charge, deliver, or make over, any estate, real or personal, security for money, bond, bill, note, money, property, goods, or effects whatsoever, to any creditor or creditors, or to any person or persons, in trust for, or to or for the use, benefit, or advantage of any creditor or creditors, every such conveyance, assignment, transfer, charge, delivery, and making over, shall be deemed, and it is hereby declared to be fraudulent and void, as against the provisional or other assignee or assignees of such prisoner appointed under this act: *Provided always*, that no such conveyance, assignment, transfer, charge, delivery, or making over, shall be so deemed fraudulent and void, unless made within three calendar months before the commencement of such imprisonment, or with the view or intention by the party so conveying, assigning, transferring, charging, delivering, or making over, of petitioning the said court for his or her discharge from custody under this act."

The proper provisions for each deed of arrangement with creditors must necessarily vary, according to the particular circumstances of the case. The most usual provisions will be found in the different precedents inserted under the third division of the present title (*e*).

(*a*) 1 Bro. & Bing. 408. 449.

(*b*) *Martin* v. *Pewtress*, 4 Burr. 2478. *Norden* v. *James*, 2 Dick. 533.

(*c*) *Bamford* v. *Barom*, 2 T. R. 594 n. *Ex parte Cawkwell*, 1 Rose, 313. *Ex parte Crawford*, 1 Christian B. L. 137. 182. *Back* v. *Gooch*, 1 Holt N. P. C. 13; 4 Camp. 232. *Ex parte Shaw*, 1 Madd. 596; 1 Gly. & Ja. 84.

(*d*) *Tappenden* v. *Burgess*, 4 East, 230.

(*e*) See pp. 440—550.

At law, an agreement to accept a composition is not binding, unless a guarantee joins.

At law, a mere agreement, not under seal, to accept so much in the pound, or, in other words, a part of a debt in satisfaction of the whole, is not binding, even though followed up by acceptance, unless the payment be guarantied by a third person, or the agreement be founded on some other sufficient consideration (*f*); and where the composition is binding, the creditor will be released from his obligation to accept the stipulated payment, if the terms of the composition are not in all respects strictly complied with by the debtor, and equity will not relieve;—as where it was provided that the composition should be paid on a given day, but the same was not duly paid, and the debtor thereupon sued for his whole debt,—equity would not interfere or restrain the creditor (*g*). So in another case (*h*), where a creditor had agreed to take a composition, to be paid by instalments, and the first instalment was paid, and the debtor then became bankrupt, Lord Hardwicke held, that the creditor might prove under the commission the whole debt, and not merely the sum agreed to be accepted by way of composition. In like manner, where a trader agreed to assign all his estate to trustees for the benefit of his creditors, a small allowance being made or reserved to himself, and many of the creditors signed an agreement, and the debtor afterwards embezzled part of the property so agreed to be assigned, and the creditors who had signed the agreement took out a commission of bankrupt against the debtor, and caused him to be declared bankrupt, it was held, that the debtor was not entitled to any relief in equity (*i*).

Where it is binding, the terms of it must be strictly observed.

Where it is not, a creditor may under circumstances be bound.

Although an agreement for a composition is in general not binding on a creditor, unless it be strictly fulfilled on the part of the debtor, yet where a bond creditor concurred in a general resolution for a composition to be secured by notes, he was, under the circumstances, and on account of the interest of the other creditors, restrained from issuing an execution on a judgment obtained on his bond for more than the amount of the notes unpaid (*k*).

A composition deed founded on fraud or misrepresentation is void, or will be re-

As a general rule, equity will assist in enforcing the performance of an agreement for a composition where it is entered into upon a fair representation of circumstances; and the same will be the case, although the parties to the transaction may stand towards each other

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(*f*) *Heathcote* v. *Crookshanks*, 2 T. R. 24. *Fitch* v. *Sutton*, 5 East, 230. *Steinman* v. *Magnus*, 11 East, 390.

(*g*) *Sewell* v. *Masson*, 1 Vern. 210. *Leigh* v. *Barry*, 3 Atk. 583.

(*h*) *Ex parte Bennett*, 2 Atk. 528.

(*i*) *Fuller* v. *Lance*, 7 Vin. Abr. 461.

(*k*) *Mackenzie* v. *Mackenzie*, 16 Ves. 372.

in the relation of trustee and *cestui que trust* (*l*); but if the concurrence of a creditor in a deed of composition is procured by any misrepresentation or fraud, he will be relieved in equity against his agreement, and in many cases the misrepresentation or fraud will vitiate the agreement, even at law (*m*). lieved against in equity.

It was formerly considered, that a clause in a deed of assignment on a composition, declaring that it should be void in case the creditors did not accede to the terms of the arrangement within a given time, would prevent the assignment from being deemed an act of bankruptcy (*n*); but in a late case (*o*), Lord Eldon expressed a decided opinion that such a clause would not prevent the deed from being so considered. In that case the proviso was, that if all the creditors whose debts amounted to upwards of twenty pounds, should not execute the indenture by the time therein mentioned, or a commission of bankruptcy should issue in the mean time, the indenture should be void. A clause in a deed making it void, if all the creditors do not concur, does not prevent the deed being an act of bankruptcy.

In a late case, where there was a proviso in a deed of composition that in case of default in payment of the instalments, or if any commission of bankrupt should issue before the whole of the composition should be paid, the covenants on the part of the creditors in respect of whose debts such default in payment should be made should be void, and a commission issued after the second instalment was due but before it was paid, it was held that the creditors were entitled to retain the first instalment, and to prove under the commission for the remainder of their original debts (*p*). An express clause securing to the creditors a right to make such proof in case of a commission issuing, is often inserted in deeds of composition, but it is not necessary. If the composition be not paid, the creditors may prove for all the debts remaining unpaid.

Deeds of composition frequently contain clauses for making the arrangement void in case a sufficient number of creditors do not concur, or a commission of bankrupt issues, or on the happening of some other specified circumstance or event; but the better course is merely to introduce a *power* enabling the trustees, in given cases, to declare the deed void, by testifying their intention so to do by some writing under their hands. It seems, however, that if a composition deed A power to the trustees to avoid a composition deed, is better than a clause making it absolutely void on the non-performance of any

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(*l*) *Cann* v. *Cann*, 1 P. Wms. 727; *Pollen* v. *Huband*, *ibid*, 751; *Lord Castleborn* v. *Fanshaw*, Cha. Pre. 99; 7 Vin. Abr. 46.

(*m*) *Monger* v. *Kett*, 12 Mod. 558; *Cooling* v. *Noyes*, 6 T. R. 263.

(*n*) *Jackson* v. *Irvin*, 2 Camp. 49; *Bamford* v. *Baron*, 2 T. R. 594 n. *Jolly* v. *Norton*, 3 Esp. Rep. 228.

(*o*) *Dutton* v. *Morison*, 17 Ves. 193.

(*p*) *Exparte Vere*, 1 Rose, 281; *Exparte Peele*, ibid. 435.

agreement, or on any other given event.

should become void by the non-concurrence of the required number of creditors within the term specified, neither the debtor nor any of the creditors who have signed it, or acted under it, can treat the deed as a void instrument (*q*).

If a creditor signs a deed of composition, leaving the amount of his debt in blank, he will be considered as binding himself to the extent of all the debts which may be then due to him from the debtor (*r*); and if an attorney agrees on behalf of a client, to compound a debt, the agreement will be binding on the attorney if he has acted without authority, and on the client if he has given authority (*s*).

What debts are payable under a general trust to pay debts.

A deed of trust, made for the payment of debts generally, is held to extend to all debts owing or contracted at the time of making the deed (*t*). Although the trust be for the payment of such creditors as come in within a year from the execution of the deed, a creditor will not be excluded from the benefit of the trust, if he claims it after the expiration of the year, provided he comes in before a division of the trust-fund; and after the year a bill may be filed for compelling the creditors who stand out, to come in or renounce the benefit of the trust (*u*).

Partial and underhand agreements are void.

Partial and underhand agreements or arrangements with creditors will always be set aside as fraudulent and void. Thus where a trader, upon becoming embarrassed in his affairs, made a composition with his creditors, and entered into a private agreement with some of the obstinate creditors to pay them the whole of their debts, the agreement was held void, on the ground of public policy, and as a fraud on the other creditors (*v*).

In a recent case, where the trusts of a composition deed were to sell, collect, and get in the estate, and out of the produce to pay a mortgage debt, and then two judgment debts, and to divide the surplus amongst the other creditors; and the deed contained a proviso, that in case any creditor whose debt amounted to 100*l.*, or any two creditors whose

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(*q*) *Spottiswoode* v. *Stockdale*, Coop. 102.

(*r*) *Harvey* v. *Wole*, 2 Stark. 195.

(*s*) *Parrot* v. *Wells*, 2 Vern. 177; *Johnson* v. *Ogilby*, 3 P. Wms. 227.

(*t*) *Purefoy* v. *Purefoy*, 1 Vern. 28.

(*u*) *Dunch* v. *Kent*, ibid. 260.

(*v*) *Jackson* v. *Mitchell*, 13 Ves. 580. *Mawson* v. *Stork*, 6 Ves. 300. *Child* v. *Danbridge*, 2 Vern. 72. *Cecil* v. *Plaistow*, 1 Anstr. 202. *Spurret* v. *Spiller*, 1 Atk. 105. *Summer* v. *Bredy*, 1 T. R. 647. *Jones* v. *Barclay*, Dougl. 695. *Easterbrook* v. *Smith*, 2 Ves. 455. *Constantine* v. *Blache*, 1 Cox, 287.

debts amounted to 150*l.*, should not execute the deed within three months, the deed should be void; and the judgment creditors, whose debts exceeded 150*l.*, did not execute the deed within the three months; it was contended that the deed had become void,—but it was decided otherwise, and held to be manifestly the intention of the parties that the proviso should only refer to the creditors who were to receive a composition, and not to the judgment creditors (*w*).

Where there are many creditors, one may sue on behalf of himself and the others.

A creditor cannot sue on behalf of himself and others who have no common interest with him (*x*); but in a late case it was held, that a bill to carry the trusts of a creditor-deed into execution, might be filed by one of the creditors only, where they all executed the deed, but were very numerous (*y*).

Where creditors may, and may not, keep other securities.

Where the creditors of a bankrupt entered into a deed of composition to receive 8*s.* in the pound in full discharge of their debts, and agreed to release every thing beyond that sum to the bankrupt, and join in a petition to the Chancellor to supersede the commission, and one of the creditors having two separate and distinct debts due to him from the bankrupt, and for one of which he held bills to the full amount, received his dividend or composition of 8*s.* in the pound on both debts, and afterwards recovered the full value of some of the bills; it was held that the bankrupt was entitled to sue for the money so obtained on the bills, in an action for money had and received (*z*); but if a deed of composition contains a provision as to the creditors giving up any securities they may have for the benefit of all the creditors, and no stipulation from which such an agreement can be inferred, it would seem that the creditors are entitled to retain for their own benefit the securities they severally possess (*a*).

As to the mode in which a trust for the payment of debts generally is to be executed.

In *Lloyd* v. *Williams* (*b*), Lord Hardwicke said, that where a trust is for payment of all debts whatsoever, and bond creditors exhaust the personal estate, the court will direct that the simple contract creditors shall stand in the place of the bond creditors, and be allowed an equivalent to what has been taken out of the personal from the real estate.

As to what debts carry interest.

A debt by simple contract does not of itself carry interest, nor will a court of equity in general direct it to be paid; and therefore, where it is intended that simple contract debts should be payable with interest,

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(*w*) *Wells* v. *Greenhill*, 5 B. & A. 869.
(*x*) *Burney* v. *Morgan*, 1 Sim. & Stu. 358.
(*y*) *Weld* v. *Bonham*, 2 Sim. & Stu. 91.
(*z*) *Stock* v. *Mawson*, 1 Bos. & Pul. 286.
(*a*) *Thomas* v. *Courtnay*, 1 B. & A. 1.
(*b*) 2 Atk. 110.

a special direction or provision for that purpose should be inserted. In the last case referred to, it was insisted that in all cases where there is a trust created for payment of debts in general, the simple contract ones should carry interest; but Lord Hardwicke observed, that he did not apprehend there was such a general rule, and said, that it was a frequent direction of the court for the master to take an account of debts, and of such particularly as in their nature carried interest. There seems, however, to be a difference when the trust is created by deed instead of by will (*c*); as, in some cases, where a trust for payment of debts has been raised by deed, simple contract debts have been considered as due by mortgage, and to carry interest.

The reason why book and other simple contract debts do not carry interest appears to be, that the amount of such debts is not legally ascertained till found by a jury, and that they cannot carry interest till so ascertained (*d*). Where, however, goods are sold, to be paid for by bill or note, which is not given, interest is payable from the time when the bill would have been due, and may be recovered as damages on a special count for the non-delivery or non-payment of the bill (*e*). In some other cases this rule is also relaxed; as where interest is payable by the usage of particular trades, or vexatious delay has been occasioned (*f*).

An undertaking in writing, to pay at a day certain or on demand, as a promissory note, carries interest at 5*l.* per cent., from the day fixed for payment, or the day demand is made, and is allowed as well in equity as at law (*g*). Interest in these cases is given rather as damages for breach of the contract, than as a debt due by virtue of the contract (*h*).

(*c*) *Burwell* v. *Parker*, 2 Ves. 363, and *Lord Botte* v. *Lord Bradford*, 2 Ves. 587; *Shirley* v. *Earl Ferrers*, 1 Bro. C. C. 41; *Carr* v. *Lady Burlington*, 1 P. Wm. 329; *Bothomley* v. *Lord Fairfax*, ibid, 334.

(*d*) *Gordon* v. *Swan*, 12 East, 419. *Mountford* v. *Willes*, 2 Bos. & Pull. 337. *Blaney* v. *Hendrick*, 3 Wils. 205. 2 Bla. Rep. 761.

(*e*) *Slack* v. *Lowell*, 3 Taunt. 157.

(*f*) *Edwowes* v. *Hopkins*, 1 Doug. 376. *Orr* v. *Churchill*, 1 H. Bl. 227, 232. *Denton* v. *Rodie*, 3 Campb. 496. *Gwyn* v. *Godby*, 4 Taunt. 346.

(*g*) *Upton* v. *Lord Ferrers*, 5 Ves. 801. *Parker* v. *Hutchinson*, 3 Ves. 133. *Lowndes* v. *Collins*, 17 Ves. 27. *Exparte Koch*, 1 Ves. and Bea. 342.

(*h*) *Exparte Cocks*, 1 Rose, 317. *Exparte Williams*, ibid, 399. *Walker* v. *Barnes*, 5 Taunt. 240.

Portions charged on real estate, carry interest in their nature, and consequently, interest must be paid on them, though no mention is made of it (*i*). The same may also be observed with respect to bonds, and all debts secured by deed, recognizance, or other specialty (*k*).

Portions, bonds, and specialties, carry interest.

In the late case of *Tatlock* v. *Smith* (*l*), an agreement had been entered into between the defendants and their creditors, by which all the stock in trade of the defendants was placed in the hands of trustees for the benefit of the creditors, and the defendants were to execute a conveyance to the trustees of all their real estate; in which deed it was agreed all usual clauses were to be inserted. The trustees carried on the defendants' business, and paid the creditors 10*s.* in the pound. They then called on the defendants to execute a conveyance of their real property, pursuant to the agreement; but the defendants objected to do this, unless the conveyance contained what they insisted was a usual and reasonable clause,—a general release from the creditors. A meeting of the creditors was then held, at which a conveyance was tendered containing a clause of release, which the defendants deemed insufficient, and therefore refused to execute the conveyance. This deed not having been executed by all the creditors, the meeting was adjourned, in order that the signature of every creditor might be obtained; and in the mean time the plaintiffs commenced an action as drawers, against the defendants as acceptors, of certain bills of exchange. When the case came on for hearing, it was decided that the plaintiffs who, as creditors, were parties to the above agreement, could not sue for their original debt, at least before the conveyance, such as it was, had been executed by all the creditors, and then refused by the defendants.

Tatlock v. *Smith.*

Some of the other recent decisions on questions relating to deeds of composition, to which it may be useful to the reader to refer, are noticed in a note below (*m*).

(*i*) *Pomfret* v. *Lord Windsor*, 2 Ves. 487. *Kilmurry* v. *Geary*, 1 Eq. Ca. Abr. 341.

(*k*) *Clarke* v. *Lord Abingdon*, 17 Ves. 106. *Lord Lonsdale* v. *Church*, 2 T. R. 388. *Legat* v. *Sewel*, Gilb. Rep. 142. *Newman* v. *Awling*, 3 Atk. 579.

(*l*) 6 Bing. 339.

(*m*) *Lewis* v. *Jones*, 4 B. & C. 506; *Metcalf* v. *Rycroft*, 6 M. and S. 75; *Tuck* v. *Tooke*, 9 B. and C. 437; *Small* v. *Marwood*, ibid. 300; *Exparte Oakley*, 1 Rose, 138; *Norton* v. *Shakespear*, ibid. 347; *Slaughter* v. *Cheyne and Bryant*, 2 Rose, 110; *Maltby* v. *Carstairs*, 7 B. and C. 735; *Holmes* v. *Love and Tucker*, 3 B. and C. 242; *Stonehouse* v. *Read*, ibid. 669; *Cork* v. *Saunders*, 1 B. and A. 46.

Letters of license.

In many cases, where the affairs of a trader are such as to afford a reasonable hope that his debts will be fully paid if only a longer time is allowed him, and he can be freed from the perplexity of mind resulting from the demands of impatient creditors, and thereby enabled to prosecute his business with diligence and energy, it is considered proper to dispense altogether with an assignment of the effects, and merely to grant the debtor an instrument or writing, called *a Letter of License* (*n*). The object is to protect him from arrests, and other legal proceedings, while he is going about his affairs; and in general it consists of an authority or leave from the creditors to the debtor, to go about from place to place, and carry on his business, free from any molestation by them during a specified period, and an engagement or covenant, that if any creditor shall molest the debtor, contrary to such license, the debtor shall thenceforth stand and be discharged from the debt of the offending creditor.

(*n*) See Vol. V. p. 183.

CONVEYANCE *of an Estate to* TRUSTEES, *upon Trusts for* SECURING *the Transfer of a Sum of Stock, and the Payment of a Sum of Money; with Dividends and Interest in the mean time.*

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

THIS INDENTURE, made the day of , 18 , BETWEEN [*borrower*] of, &c. of the first part; [*lender*] of, &c. of the second part; and [*one trustee*] of, &c. and [*other trustee*] of, &c. of the third part; (*Recites two separate bonds from the borrower to the late husband of the lender, for securing the investment of two several sums of five hundred pounds and five hundred pounds, three per cent. consolidated bank annuities, and a sum equal to the dividends in the mean time, as therein mentioned; the death of the husband, having first made his will, and appointed the lender, and* [*A. B.*] *of, &c. executrix and executor, who duly proved it; a mortgage in fee of the premises hereinafter mentioned, from the borrower to the lender, and* [*A. B.*], *for securing the above sums of stock; and the death of* [*A. B.*];) AND WHEREAS by a deed poll or instrument in writing, bearing date the day of , 18 , under the hand and seal of the said [*borrower*], and indorsed on the said hereinbefore recited indenture of release, the said [*borrower*] (in consideration of the sum of one hundred and fifty pounds of lawful, &c. to him paid by the said [*lender*] as therein is mentioned) covenanted with the said [*lender*], her executors, administrators, and assigns, that the said messuage or tenement, lands, and hereditaments hereinafter described, and intended to be hereby granted, released, and confirmed, and their appurtenances, should remain and be a security, as well for the repayment of the said sum of one hundred and fifty pounds, so paid to him as aforesaid, together with interest for the same after the rate of five pounds for one hundred pounds by the year (*a*), as for the said sums of five hundred

Parties.

Recites two bonds and a mortgage;

a deed of further charge;

(*a*) For other recitals of deeds of Further Charge, see Index, RECITALS, FURTHER CHARGE.

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

pounds, three per cent. consolidated annuities, and five hundred pounds, like annuities, and dividends, secured by the said hereinbefore recited bonds and indentures, as hereinbefore is mentioned; (*Recites another surcharge for three hundred pounds of lawful money, &c. by the borrower to the lender;*) AND WHEREAS the said several sums of five hundred pounds, three per cent. consolidated bank annuities, and five hundred pounds, like annuities, and the said several sums of one hundred and fifty pounds of lawful money of Great Britain, and three hundred pounds of like lawful money, still remain due and owing on the several securities hereinbefore mentioned, with an arrear of dividends and interest thereon, amounting, to this day, to the sum of fifty-seven pounds ten shillings of lawful money of Great Britain; AND WHEREAS the said firstly hereinbefore recited bond was improperly stamped, and the said secondly hereinbefore recited bond, and the said hereinbefore recited indentures of lease and release, have been nearly destroyed by rats; AND WHEREAS it hath been agreed that the said two severally hereinbefore recited bonds should be given up by the said [*lender*] to the said [*borrower*] to be cancelled; *And* that the re-transfer of the said sums of five hundred pounds, three per cent. consolidated bank annuities, and five hundred pounds, like annuities, and the re-payment of the said sums of one hundred and fifty pounds of lawful money of Great Britain, and three hundred pounds of like lawful money, and the payment of the said sum of fifty-seven pounds ten shillings of like lawful money, which is now due in respect of dividends and interest as hereinbefore is mentioned, should be postponed to the day of , 18 , and should be secured, with the amount of the dividends on the said sum of five hundred pounds, three per cent. consolidated bank annuities, and five hundred pounds, like annuities, and with interest after the rate of five pounds for every one hundred pounds by the year, for the said sums of one hundred and fifty pounds, three hundred pounds, and fifty-seven pounds ten shillings, in the mean time, by the bond and covenant of the said [*borrower*], and by a conveyance to the said [*trustees*], their heirs and assigns, upon the trusts hereinafter declared, of the said messuage

that the aforesaid sums of stock and money are still due, with an arrear of interest thereon;

that the first bond was not properly stamped, and the second bond and the mortgage deeds have been partially destroyed by rats;

that it has been agreed that the bonds should be cancelled, and the stock and money secured as after mentioned;

or tenement, lands, and hereditaments hereinafter described, and intended to be hereby granted, released, and confirmed, and their appurtenances; AND WHEREAS in pursuance and part performance of the said agreement, the said [*lender*] hath this day delivered up to the said [*borrower*], the said two severally hereinbefore recited bonds to be cancelled, as they the said [*lender*] and [*borrower*] do hereby respectively testify and declare; AND WHEREAS in pursuance and further performance of the said agreement, the said [*borrower*] hath by his bond or obligation in writing, bearing even date with these presents (*b*), secured to the said [*lender*] the transfer of the sum of one thousand pounds, three per cent. consolidated bank annuities (the amount of the said two several sums of five hundred pounds and five hundred pounds, like annuities), and the payment of the sum of five hundred and seven pounds ten shillings of lawful money of Great Britain (the amount of the said three several sums of one hundred and fifty pounds, three hundred pounds, and fifty-seven pounds ten shillings, like money), and the payment of the amount of the dividends on the said sum of one thousand pounds, three per cent. consolidated bank annuities, and of interest after the rate of five pounds for one hundred pounds by the year on the said sum of five hundred and seven pounds ten shillings of lawful money of Great Britain, at the times in the condition of the said bond and hereinafter mentioned for the transfer and payment of the same respectively: NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, HE the said [*borrower*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lender*], her executors, administrators, and assigns, that he the said [*borrower*], his heirs, executors, or administrators, shall and will, on the day of , 18 , well and truly transfer, or cause to be transferred, into the name or names of the said [*lender*], her executors,

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

that the bonds have been given up to be cancelled;

that the borrower has executed a new bond for all the sums of stock and money, dividends, and interest.

First witnessing part.

Covenant to transfer the stock, and pay a sum equal to the dividends, and to pay the principal sum and the interest thereof half-yearly.

(*b*) For other recitals of bonds of this kind, see Index, RECITALS, BONDS.

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

administrators, or assigns, in the books of the governor and company of the Bank of England, the sum of one thousand pounds, three per cent. consolidated bank annuities; *And* shall and will in the mean time, on the respective days on which the dividends on the three per cent. consolidated bank annuities are payable to the public at the Bank of England, well and truly pay, or cause to be paid to the said [*lender*], her executors, administrators, or assigns, so much money as shall be equal to the dividends on the sum of one thousand pounds of that stock; *And* shall and will, on the said day of , 18 , well and truly pay, or cause to be paid, unto the said [*lender*], her executors, administrators, or assigns, the sum of five hundred and seven pounds ten shillings of lawful money of Great Britain; *And* shall and will, on the day of , 18 , now next ensuing, and on the day of and the day of in each of the years 18 , 18 , and 18 , well and truly pay, or cause to be paid, to the said [*lender*], her executors, administrators, or assigns, half a year's interest on the said sum of five hundred and seven pounds ten shillings, after the rate of five pounds for one hundred pounds by the year; *And* shall and will make such transfer and payments as aforesaid without any deduction or abatement whatsoever, for or in respect of any present or future taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and of the sum of ten shillings of lawful money, &c. by the said [*trustees*] to each of them the said [*lender*] and [*borrower*] paid, at or before the sealing and delivery of these presents (the receipts whereof are hereby respectively acknowledged), SHE the said [*lender*], according to her estate, right, and interest, under or by virtue of the said hereinbefore recited indentures of lease and release, and so far as she can or may at law or in equity, but not further or otherwise, and with the privity and approbation of the said [*borrower*], (testified by, &c.), *Hath* bargained, sold, and released, *And* by these presents *Doth* bargain, sell, and release; *And* the said [*borrower*], at the request,

Second witnessing part.

The lender and borrower convey to the trustees,

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

and by the direction, and upon the nomination of the said [*lender*], (testified by, &c.) *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release, and confirm unto the said [*trustees*] (in their actual possession, &c.), and their heirs, ALL THAT, &c. (*parcels*), Together with all houses, &c. *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuage or tenement, lands, and all and singular other the hereditaments hereby granted, released, and confirmed, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*trustees*] and their heirs, *To the use* of them the said [*trustees*], their heirs and assigns for ever (*c*) ; *But* never-

parcels.

Habendum to the trustees in fee, upon the trusts after mentioned.

(*c*) The following form of Trusts and Covenants, is frequently used:

" *But* nevertheless, upon and for the trusts, ends, intents, and purposes hereinafter expressed and declared of and concerning the same, (that is to say) ; *Upon trust* for the said [*borrower*], his heirs and assigns, and to permit and suffer him and them to receive and take the rents, issues, and profits thereof, until default shall be made in payment by the said [*borrower*], his heirs, executors, administrators, or assigns, of all or some part of the sum of pounds, and interest, hereby covenanted to be paid as hereinafter is mentioned, on or at the days and times in the covenant or agreement for payment of the same mentioned and appointed for that purpose, contrary to the true intent and meaning of these presents, and the said [*lender*], his executors, administrators, or assigns, shall have given the said [*borrower*], his heirs or assigns, or left at the last or most usual place of his or their residence or abode, in England, notice in writing, demanding payment of the said sum and interest, or so much thereof respectively as shall then remain unpaid, and six calendar months shall have elapsed from the time of giving or leaving the same notice, without such payment being made; *And* in case of such default, then, *Upon trust* that he the said [*trustee*], his heirs or assigns, do and shall immediately, or at any time thereafter, at the request of the said [*lender*], his executors, administrators, or assigns, without any further consent or

Upon the trusts following, *viz.*:

Upon trust to permit the borrower to enjoy the premises until default in payment for six months after notice to pay;

and in case of default, then upon trust to sell;

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

theless upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of and concerning the same; (*Covenant from the lender with the trustees, that she has done no act to incumber*): AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the said [*trustees*], their heirs and assigns, shall stand and be seised

Declaration that the trustees shall stand seised of the premises upon

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concurrence of the said [*borrower*], his heirs or assigns, make sale and absolutely dispose of the said messuage or tenement, garden, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, and their appurtenances, or any of them, or any part thereof, either altogether and in one lot, or by parcels, and in several lots, and either by public auction or private contract, or partly by public auction, and partly by private contract, as he or they shall think fit; *And* do and shall convey, or otherwise assure the same when sold, to the purchaser or purchasers thereof, his, her, or their heirs, or as he, she, or they shall appoint; *And* do and shall, by, with, and out of the rents, issues, and profits of the said messuage or tenement, garden, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, and their appurtenances, which shall become due in the mean time, and until such sale or sales, and shall be received by him or them, *And also* the money which shall arise from such sale or sales as aforesaid, in the first place deduct, retain, and pay unto and for himself and themselves, the costs, charges, and expenses of and attending upon the execution of the trusts hereby in him and them reposed; *And* in the next place, pay, satisfy, and discharge the sum or sums of money (if any) which the said [*lender*], his executors, administrators, or assigns, shall have paid, laid out, or expended, for the taxes and repairs of the said premises, or for keeping the same insured, or which the said [*trustee*], his heirs, executors, administrators, or assigns, shall have paid or be liable to pay, in, for, or about any action or actions, or suit or suits at law or in equity, which shall be commenced or prosecuted for obtain-

and to convey to the purchasers;

and out of the rents of the premises till sale, and of the monies to arise by sale, to pay the expenses of the trust;

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

of, and interested in the said messuage or tenement, lands, and hereditaments hereby granted, released, and confirmed, or intended so to be, and their appurtenances, upon the trusts, and in manner following, (that is to say); *If* the said sums of one thousand pounds, three per cent. consolidated bank annuities, and five hundred and seven pounds ten shillings of lawful money of Great Britain, and such amount of dividends, and such interest as aforesaid, shall

the trusts following, *viz.*;

If the stock and monies secured are transferred and

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ing possession of the said premises, or any of them, or any part thereof, or for enforcing the performance of any contract or contracts which shall be entered into with any person or persons who shall agree to become the purchaser or purchasers of the said premises, or any of them, or any part thereof, or otherwise for carrying the trusts hereby created into execution; *And* in the next place, pay to the said [*lender*], his executors, administrators, or assigns, the said sum of pounds and interest hereby secured, or so much thereof respectively as shall be then due and unpaid; *And* do and shall pay the surplus or residue (if any) of the money which shall be so received or arise as aforesaid, after answering the several trusts and purposes aforesaid, unto the said [*borrower*], his heirs or assigns; *And* do and shall convey, or otherwise assure unto the said [*borrower*], his heirs or assigns, or unto such person or persons as he or they shall direct or appoint, all such and so many, and such part or parts of the said messuage or tenement, garden, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, and their appurtenances, as shall then remain unsold, freed and discharged of and from all estates, charges, and incumbrances whatsoever, made or committed by him the said [*trustee*], his heirs and assigns, in the mean time; AND IT IS HEREBY DECLARED AND AGREED between and by the said parties to these presents, and the said [*borrower*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, grant, declare, and direct, that the person or persons who shall become the purchaser or purchasers of all or any part of the said messuage or tenement, garden, hereditaments, and premises hereby granted and released, or otherwise

and the sum of —*l.* and interest, secured to the lender;

and to pay the surplus to the borrower;

and to convey to the borrower such of the premises as shall not be sold for the purposes of the trust.

Declaration that purchasers paying their money to the trustee, and taking his receipt, shall not be obliged to see to the application of it;

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

be duly transferred and paid at the times and in the manner hereinbefore mentioned, *Then* and in such case, *Upon trust* that they the said [*trustees*], their heirs or assigns, do and shall, at any time or times thereafter, upon the request, and at the proper costs and charges of the said [*borrower*], his heirs, executors, administrators, or assigns, convey and assure the said messuage or tenement, lands, and hereditaments, hereby granted, released, and

paid at the times appointed,

then to reconvey the premises to the borrower.

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assured, or intended so to be, and their appurtenances, and pay his, her, or their purchase money or purchase monies, or any part thereof, to the said [*trustee*], his heirs or assigns, shall not be obliged or required to see to the application of the same money, or any part thereof, nor be answerable or accountable for the misapplication or nonapplication of the same, nor be obliged or required to see or ascertain whether such notice as is hereinbefore mentioned hath been given, or whether any money is due or owing on this security; *And* that all receipts which shall be given for the said purchase money, or any part thereof, by the said [*trustee*], his heirs or assigns, shall be good and sufficient discharges for the sum or sums of money which therein or thereby respectively shall be acknowledged or expressed to have been received; *And* that every sale which shall be made, and every contract for sale which shall be entered into, and every conveyance which shall be executed by the said [*trustee*], his heirs or assigns, shall be binding and conclusive on the said [*borrower*], his heirs and assigns; PROVIDED ALWAYS, and these presents are upon this condition, and it is hereby declared and agreed by and between the said parties to these presents, that if the said [*borrower*], his heirs, executors, administrators, or assigns, or any of them, do and shall well and truly pay, or cause to be paid unto the said [*lender*], his executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain and Ireland, and the sum of pounds of like money, as and for one year's interest for the same, after the rate of four pounds ten shillings for one hundred pounds for a year, making together the sum of pounds, in the parts, shares, or proportions, and on or at

and that all sales, contracts, and conveyances made by the trustee, shall be binding on the borrower.

Proviso for redemption and reconveyance, if the money is paid at the times appointed.

confirmed, or intended so to be, and their appurtenances, unto the said [*borrower*], his heirs and assigns for ever, or to such uses, and in such manner, as he or they shall in that behalf order or direct, free from all incumbrances whatsoever made, done, or committed by the said [*trustees*], or either of them, or their, or either of their heirs or assigns in the mean time; *But* if default shall be made in the transfer and payment, at the times and in the manner hereinbefore

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

But if default shall be made in such trans-

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the days or times hereinafter mentioned, (that is to say); the sum of pounds, (being one half year's interest for the said sum of pounds, after the rate aforesaid), on the day of next ensuing the date hereof, *And* the sum of pounds, (being the whole of the said principal sum of pounds, and another half year's interest for the same, after the rate aforesaid), on the day of , which will be in the year of our Lord 18 , *Then* and in that case, and immediately after such payments shall be so made as aforesaid, he the said [*trustee*], his heirs or assigns, shall and will, at the request, and costs and charges of the said [*borrower*], his heirs, executors, administrators, or assigns, convey and assure the said messuage or tenement, garden, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, and their appurtenances, unto and to the use of the said [*borrower*], his heirs or assigns, or as he or they shall in that behalf direct or appoint, freed and discharged of and from all estates, charges, and incumbrances whatsoever, made or committed by the said [*trustee*], his heirs or assigns, in the mean time; AND the said [*borrower*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree to and with the said [*lender*], his executors, administrators, and assigns, that he the said [*borrower*], his heirs, executors, administrators, or assigns, shall and will well and truly pay, or cause to be paid, unto the said [*lender*], his executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain and Ireland, with interest for the same after the rate of four pounds ten shillings for one hundred

Covenant with the lender for the payment of the money and interest secured.

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

mentioned, of the said sums of one thousand pounds, three pounds per cent. consolidated bank annuities, and five hundred and seven pounds ten shillings of lawful money of Great Britain, and of such amount of dividends and such interest as aforesaid, or any of them, or any part or parts thereof respectively, *Then* and in such case, *Upon trust* that they the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, do and shall, at the request in

fer and payments, then In trust to sell the premises.

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pounds by the year, in the parts, shares, and proportions, and on or at the days and times hereinbefore mentioned and appointed for the payment thereof respectively, without any deduction or abatement on any account whatsoever, and according to the true intent and meaning of these presents; AND the said [*borrower*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustee*], his heirs and assigns, and also with and to the said [*lender*], his executors, administrators, and assigns, in manner following, (that is to say); that he the said [*borrower*] now hath in himself good right, full power, and lawful and absolute authority, to grant, release, and convey, or otherwise assure the said messuage or tenement, garden, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, and their appurtenances, unto and to the use of the said [*trustee*], his heirs and assigns for ever, Upon the trusts and in manner aforesaid, according to the true intent and meaning of these presents; *And also* that after default shall be made in payment of the said sum of pounds and interest, or any part thereof respectively, contrary to the true intent and meaning of these presents, and of the proviso and covenant or agreement hereinbefore contained, it shall and may be lawful to and for the said [*trustee*], his heirs or assigns, (subject or without prejudice to the trusts aforesaid,) to enter into and upon, and from time to time and at all times thereafter, to have, hold, use, occupy, possess, and enjoy, and receive and take the rents, issues, and profits of the said messuage or tenement, garden, hereditaments, and premises hereby granted and released, or

Covenants for title from the borrower with the trustee, and also with the lender.

writing of the said [*lender*], her executors, administrators, or assigns, absolutely sell and dispose of the said messuage or tenement, lands, and hereditaments hereby granted, released, and confirmed, or intended so to be, and their appurtenances, and every or any of them, either together or in parcels, and either by public auction or private contract, to any person or persons who shall be willing to become the purchaser or purchasers of the same,

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

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otherwise assured, or intended so to be, and their appurtenances, without any suit, eviction, ejection, interruption, or denial whatsoever, of, from, or by the said [*borrower*] or his heirs, or any other person or persons whomsoever; *And* that free and clear of and from all former and other adverse estates, uses, titles, troubles, charges, and incumbrances whatsoever; *And moreover*, that he the said [*borrower*] and his heirs, and all and every other persons and person whomsoever lawfully or equitably claiming, or to claim, any estate, right, title, trust, charge, or interest, at law or in equity, in, to, or out of the said messuage or tenement, garden, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, and their appurtenances, or any of them, or any part thereof, shall and will, from time to time, and at all times hereafter, upon every reasonable request of the said [*trustee*], his heirs or assigns, or of the said [*lender*], his executors, administrators, or assigns, but at the costs and charges in the law of the said [*borrower*], his heirs, executors, administrators, or assigns, make, do, acknowlege, levy, suffer, and execute, or cause and procure to be made, done, acknowleged, levied, suffered, and executed, all and every such further and other lawful and reasonable acts, deeds, conveyances, and assurances whatsoever, for the further, better, and more effectually granting, releasing, conveying, and assuring the said messuage or tenement, garden, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, and their appurtenances, unto and to the use of the said [*trustee*], his heirs and assigns for ever, Upon the trusts and in manner aforesaid, according to the true intent and

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

for the best price or prices which can or may be had or obtained for the same; *And* do and shall, for the purposes aforesaid, enter into, make, and execute, all such contracts, agreements, conveyances, and assurances, as the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, shall think reasonable and proper; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties to these presents, that all such contracts, agreements, conveyances, and assurances, as shall be entered into, made, and executed, by the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, shall, whether the said [*borrower*], his heirs or assigns, shall or shall not join therein or assent thereto, be equally valid and effectual; *And* shall bind the said [*borrower*], his heirs and assigns, and all persons whomsoever, claiming or to claim by, from, through, under, or in trust for him, them, or any of them; AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by the said parties to these presents, that the receipt or receipts in writing of the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, for the monies which shall arise from such sale or sales as aforesaid, or any part thereof, shall be a good and sufficient discharge, or good and sufficient discharges to the person or persons to whom the same shall be given, for the monies in such receipt or receipts acknowledged to have been received; *And* that the person or persons paying such monies and taking such receipt or receipts for the same as aforesaid, shall not afterwards be answerable or accountable for the misapplication or nonapplication of the monies in such receipt or receipts expressed or acknowledged to have been received, or be in anywise bound or concerned to see to the application thereof; AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by the said parties to these presents, that the said [*trustees*], and the survivor of them,

Agreement that sales and conveyances made by the trustees shall be binding on the borrower;

and that the trustees' receipts shall be sufficient discharges.

Declaration of trust of the monies to arise by the sales.

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meaning of these presents, as by the said [*trustee*], his heirs or assigns, or the said [*lender*], his executors, administrators, or assigns, or any of them, or their or any of their counsel in the law, shall be reasonably devised or advised and required."

and the heirs or assigns of such survivor, shall stand and be possessed of, and interested in the monies which shall arise from such sale or sales as aforesaid, upon and for the trusts, intents, and purposes, hereinafter expressed and declared of and concerning the same, (that is to say); *Upon trust*, that they the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, do and shall, with and out of the same monies, in the first place pay and discharge all the costs, charges, and expenses, which shall be occasioned by carrying the trusts hereby created into execution; *And* in the next place, transfer or cause or procure to be transferred, into the name or names of the said [*lender*], her executors, administrators, or assigns, in the books of the governor and company of the bank of England, the sum of one thousand pounds, three pounds per cent. consolidated bank annuities, or so much thereof as shall be then due, on the security of these presents; *And* in the next place, pay or cause to be paid to the said [*lender*], her executors, administrators, or assigns, the said principal monies, dividends, and interest, hereby respectively secured, or so much thereof respectively as shall be then due, on the security of these presents: *And* do and shall pay the surplus or residue of the said monies so to arise from such sale or sales as aforesaid, (if any such shall remain after answering the trusts and purposes hereinbefore mentioned), unto the said [*borrower*], his heirs, executors, administrators, or assigns, for his or their own use and benefit; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that in the mean time, and until the said messuage or tenement, lands, and hereditaments, hereby granted, released, and confirmed, or intended so to be, and their appurtenances, shall be either conveyed to the said [*borrower*], his heirs and assigns, or as he or they shall order or direct, *Or* be sold and disposed of under the trusts aforesaid, the said [*trustees*], and the survivor of them, and the heirs and assigns of such survivor, do and shall (*d*) receive and take the rents, issues, and profits of

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

Proviso that till default is made, the trustees shall receive the rents, and thereout keep down the interest, and pay the surplus rents to the borrower.

(*d*) This clause is most commonly introduced into deeds of trust for securing money; but as the borrower, in most cases, remains in pos-

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

the said messuage or tenement, lands, and hereditaments, and their appurtenances, as and when the same shall become due and payable; *And* do and shall, with and out of the same, pay the said [*lender*], her executors, administrators, or assigns, the amount of dividends and interest, hereinbefore made payable for the said sums of one thousand pounds, three pounds per cent. consolidated bank annuities, and five hundred and seven pounds ten shillings of lawful money of Great Britain as aforesaid, or so much thereof respectively as shall not be otherwise satisfied (*e*); *And* do and shall pay so much of the said rents, issues, and profits, as shall from time to time remain, after answering the purposes aforesaid, unto the said [*borrower*], his heirs or assigns, for his and their own use and benefit (*f*); AND the said [*borrower*], *Doth* hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*trustees*], their heirs and assigns, in manner following, (that is to say); that he the said [*borrower*], now hath in himself good right, full power, and lawful and absolute authority, to grant, bargain, sell, release, and convey, the said messuage or tenement, lands, and hereditaments, hereby granted, released, and confirmed, or intended so to be, and their appurtenances, unto and to the use of the said [*trustees*], their heirs and assigns, upon the trusts and in manner aforesaid, and according to the

Covenants for title.

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session of the estate, as well where the security is prepared in the form of a trust-deed, as where it is drawn as a mortgage, and pays the interest himself, there is no occasion that the trustees should in fact receive the rents and apply them as here directed; and therefore the usual clause in a mortgage deed, for quiet enjoyment by the mortgagor until default, may often be properly inserted in this place, instead of the above clause.

(*e*) Sometimes a trust is added for payment of taxes and repairs, and of the premiums payable for keeping the premises insured against loss by fire.

(*f*) In mortgages, general covenants for title are usually introduced; but in trust-deeds, it is very common to qualify the covenants for title, as in a conveyance on a *Sale*. See titles PURCHASE DEEDS, and MORTGAGES, and Index, COVENANTS for TITLE.

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

true intent and meaning of these presents; *And* that the said messuage or tenement, lands and hereditaments hereby granted, released, and confirmed, or intended so to be, and their appurtenances, shall and may from time to time, and at all times hereafter, remain and be upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinbefore expressed, declared, and contained of and concerning the same respectively, and the rents, issues, and profits thereof, and of every part thereof respectively, be received and taken accordingly, without any let, suit, trouble, interruption, or disturbance whatsoever, of, from, or by the said [*borrower*], his heirs or assigns, or any other person or persons whomsoever having or lawfully or equitably claiming any estate, right, title, or interest in, to, or out of the same messuage or tenement, lands, and hereditaments, or any of them, or any part or parts thereof respectively; *And* that free and clear, and freely and clearly, and absolutely acquitted, released, exonerated, and for ever discharged, or otherwise, by the said [*borrower*], his heirs, executors, or administrators, saved, protected, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, mortgages, uses, wills, intails, annuities rent charges, rents seck, and arrears of rent, fines, issues, amerciaments, statutes, recognizances, judgments, executions, extent, seizures, sequestrations, and all other estates, titles, troubles, charges, debts, and incumbrances whatsoever; *And further*, that if default shall be made in the transfer and payment, at the times and in the manner hereinbefore mentioned, of the said sums of one thousand pounds, three per cent. &c. and five hundred and seven pounds ten shillings of lawful money of Great Britain, and of such amount of dividends, and such interest as aforesaid, or any of them, or any part or parts thereof respectively, *Then* and in such case the said [*borrower*] and his heirs, and all and every other persons and person whomsoever, having, or lawfully or equitably claiming, or who shall or may hereafter have, or lawfully or equitably claim, any estate, right, title, or interest whatsoever in, to, or out of the said messuage or tenement, land, and hereditaments hereby granted, released,

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

and confirmed, or intended so to be, or any of them, or any part thereof, shall and will from time to time, and at all times thereafter, upon the request of the said [*trustees*], their heirs or assigns, or of the said [*lender*], her executors, administrators, or assigns, but at the expense of the said [*borrower*], his heirs or assigns, until the said hereditaments shall be sold and disposed of under the provisions hereinbefore contained, and afterwards of the purchaser or purchasers of the said hereditaments, or any of them, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, things, conveyances, and assurances in the law whatsoever, for the further, better, and more perfectly and absolutely granting, conveying, and assuring of the said messuage or tenement, lands, and hereditaments hereby granted, released, and confirmed, or intended so to be, and their appurtenances, unto and to the use of the said [*trustees*], their heirs and assigns, upon the trusts, and in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*trustees*], their heirs or assigns, or their or any of their counsel in the law, shall be reasonably advised or devised and required (*g*); PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that the said [*trustees*], and their respective heirs, executors, and administrators, shall not be answerable or accountable the one for the others or other of them, or for any involuntary loss, or for the signing of receipts for the sake of conformity; *And* that the said [*trustees*], and each of them, and their, and each of their heirs, executors, and administrators, shall be saved harmless and indemnified by the said [*borrower*], his heirs, executors, and ad-

Clause for indemnity of the trustees.

(*g*) This precedent does not contain any clauses for changing the trustees, or appointing new ones in case of death, or refusal, or incapacity to act; but the omission of such clauses can be very seldom recommended. In deeds of this kind, they are often left out, in the expectation that the money lent will soon be paid off, or be raised by sale, before a change of trustees can be necessary, and to save expense; but it is unwise to do so.

FOR SECURING THE TRANSFER OF STOCK, AND THE PAYMENT OF MONEY.

ministrators, from and against all costs, charges, and expenses, attending or in anywise relating to the trusts, powers, and authorities, hereby reposed in and given to them respectively as aforesaid: *And* that it shall and may be lawful for them, with and out of the trust estates and premises, or the monies which shall come to their hands by virtue of these presents, to reimburse themselves, and to allow their co-trustee or co-trustees all the costs, charges, and expenses, which they or any of them shall incur, sustain, or pay, in or about the execution of the trusts hereby in them reposed, or in anywise in relation thereunto; AND the said [*borrower*] doth hereby (*h*) attorn and agree to become tenant to the said [*trustees*], their heirs and assigns, of the said messuage or tenement, lands, and hereditaments hereby granted, released, and confirmed, or intended so to be, with their appurtenances, at the yearly rent of pounds; *And* doth hereby covenant with the said [*trustees*], their heirs and assigns, to pay to them the same yearly rent, by two equal half-yearly payments, on the day of , and the day of , in every year. IN WITNESS, &c.

Agreement by the borrower to become tenant to the trustees, at the rent of —*l.*

(*h*) For other forms of attornment, and a statement of the occasions in which such a clause is used, see Index, ATTORNMENT, MORTGAGES.

ASSIGNMENT OF LEASEHOLDS, &c. FOR INDEMNIFYING SURETIES AGAINST THE PAYMENT OF NOTES.

ASSIGNMENT *of* LEASEHOLD *Premises, and the* FURNITURE *therein, for securing to two* SURETIES, *a Sum equal in Amount to the Sums secured by certain Promissory Notes, in which the Sureties had joined on the behalf of the Assignor* (*a*).

THIS INDENTURE, made the day of , BETWEEN [*assignor*] of, &c. of the one part, and [*sureties*] of, &c. of the other part: WHEREAS by an indenture of lease, bearing date the day of , and made or expressed to be made between, &c. (*recites a lease from* [E. F.] *to* [G. H.]); AND WHEREAS by an indenture of assignment, bearing date the day of , and made, &c. (*recites an assignment of the lease from* [G. H.] *to the* [*assignor*];) AND WHEREAS the said [*assignor*] is possessed of and absolutely entitled to the furniture, fixtures, and other articles and things, which are now in, upon, or about the messuage or tenement and premises hereinbefore referred to, or any part thereof, and which are mentioned and set forth in the schedule hereunder written or hereunto annexed; AND WHEREAS the said [*assignor*] hath requested the said [*sureties*] to join with him in giving to different persons, (creditors of the said [*assignor*]), divers promissory notes, for the payment to them

Parties.

Recites a lease to G. H., and an assignment of it from him to the assignor;

that the assignor is entitled to the furniture mentioned in the schedule;

that he has requested the sureties to join him in certain promissory notes, and pro-

Stamp.

(*a*) In the margin of the first page of the draft, is the following note: "I am inclined to think that this deed would be considered as an *Indemnity* deed merely, and only liable to a common deed stamp; but as it creates a charge on the land to the extent of the sums secured by the promissory notes, in case they should not be paid when they become due, I should recommend the parties to have the first skin stamped with the usual 1*l.* 15*s.* stamp, and a mortgage *ad valorem* duty stamp for ——— *l.* andthe second and each subsequent skin stamped with a progressive stamp of 1*l.* 5*s.*"

ASSIGNMENT OF LEASEHOLDS, &c. FOR INDEMNIFYING SURETIES AGAINST THE PAYMENT OF NOTES.

of various sums of money, amounting in the whole to the sum of pounds, on the day of , 18 ; *And* in order to induce them so to do, and to indemnify them against all liability on account thereof, the said [*assignor*] hath proposed and agreed to assign and make over to them, upon the trusts, and in manner hereinafter mentioned, the said messuage or tenement and premises comprised in and assigned by the said lastly hereinbefore recited indenture as aforesaid, and their appurtenances, *And* also the said furniture, fixtures, and other articles and things, mentioned and set forth in the said schedule hereunder written or hereunto annexed (*b*) ; AND WHEREAS the said [*sureties*] have consented and agreed to comply with the said request of the said [*assignor*], upon the terms aforesaid; *And* they have accordingly this day joined in such promissory notes as hereinbefore mentioned, and thereby made themselves liable for the payment, on the account of the said [*assignor*], of divers sums of money, to the extent in the whole of the sum of pounds ; NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement on the part of the said [*assignor*], and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain, by the said [*sureties*] to the said [*assignor*] paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HE the said [*assignor*] *Hath* granted, bargained, sold, assigned, and set over, *And* by these presents *Doth*, &c. unto the said [*sureties*], their executors, administrators, and assigns, ALL THAT and those the said messuage or tenement and premises, which were comprised in and demised by the said hereinbefore recited indenture of lease as aforesaid, and which were so assigned to the said [*assignor*] by the said lastly recited indenture, as hereinbefore is mentioned, and their appurtenances; *And* all the estate,

posed to assign to them the leasehold premises, furniture &c. by way of security;

and that the sureties have agreed to comply with the request, and have joined in such notes accordingly.

First witnessing part.

The assignor assigns to the sureties,

the leasehold premises,

(*b*) For a mortgage of leaseholds and furniture, see the precedents under the title MORTGAGES;—where some practical observations are made, to which the reader may find it useful to refer, while preparing a trust deed of this description.

ASSIGNMENT OF LEASEHOLDS, &C. FOR INDEMNIFYING SURETIES AGAINST THE PAYMENT OF NOTES.

&c.; To HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereby firstly assigned, or intended so to be, and their appurtenances, unto the said [*sureties*], their executors, administrators, and assigns, from henceforth for and during all the residue and remainder which is now to come and unexpired of the said term of ninety-nine years, created by the said hereinbefore recited indenture of lease as aforesaid, at, under, and subject to the rent, covenants, and agreements, in and by the said last mentioned indenture respectively reserved and contained, on the lessee's or assignee's part to be paid, observed, and performed; *But* nevertheless, upon and for the trusts, intents, and purposes, hereinafter declared concerning the same: AND THIS INDENTURE ALSO WITNESSETH (*c*), that in pursuance and further performance of the said agreement, and for the considerations hereinbefore expressed, HE the said [*assignor*] *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth*, &c. unto the said [*sureties*], their executors, administrators, and assigns, ALL the household goods and furniture, fixtures, books, pictures, plate, and other articles and things, which are now in, upon, or about the said messuage or tenement and premises, hereinbefore assigned, or any part thereof, and which are mentioned and set forth in the said schedule hereunder written or hereunto annexed; *And* all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*assignor*], in, to, out of, or upon the same household goods and furniture, fixtures, articles, and things, and every or any of them, To HAVE, HOLD, RECEIVE, AND TAKE, the said household goods and furniture, fixtures, articles, things, and all and singular other the premises hereby lastly assigned, or intended so to be, and every of them, unto the said [*sureties*], their executors, administrators, and assigns, absolutely; *But* nevertheless upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same; AND IT IS HERE-

Habendum to the sureties for the remainder of the term, but upon the trusts after-mentioned.

Second witnessing part.

The furniture in the schedule.

Habendum to the sureties absolutely, but upon the trusts after-mentioned.

(*c*) It is more usual to assign the leaseholds and furniture by one and the same witnessing part, and to have two habendums. See PURCHASE DEEDS, Vol. VII. p. 19.

ASSIGNMENT OF LEASEHOLDS, &C. FOR INDEMNIFYING SURETIES AGAINST THE PAYMENT OF NOTES.

BY AGREED AND DECLARED between and by all the parties to these presents, that the said [*sureties*], their executors, administrators, and assigns, shall stand and be possessed of and interested in the said messuage or tenement, fixtures, household goods and furniture, and premises hereby respectively assigned, or intended so to be, and every of them, and every part thereof respectively, and their appurtenances, upon the trusts, and in manner following, (that is to say); *If* the said [*assignor*], his heirs, executors, or administrators, shall and do, on or before the day of now next ensuing, well and truly pay, or cause to be paid to the said [*sureties*], their executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain, (being the total amount of the several promissory notes hereinbefore mentioned,) *Then* and in such case, *Upon trust* that they the said [*sureties*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, at any time after such payment shall be so made as aforesaid, at the request, costs, and charges of the said [*assignor*], his executors, administrators, or assigns, assign, or otherwise make over the said messuage or tenement, fixtures, household goods, furniture, and premises hereby respectively assigned, or intended so to be, and every of them, and every part thereof respectively, and their appurtenances, unto the said [*assignor*], his executors, administrators, or assigns, or as he or they shall in that behalf order or direct, free from all incumbrances whatsoever, made, done, or committed by them the said [*sureties*], or either of them, or their or any of their executors, administrators, or assigns, so as for the doing thereof, they, or any of them, be not compelled or compellable to go or travel from the place or places of their or any of their usual abode or dwelling; *But* if, contrary to the true intent and meaning of these presents, the said [*assignor*], his heirs, executors, or administrators, shall make default in payment of the said sum of pounds to the said [*sureties*], their executors, administrators, or assigns, at the time and in manner aforesaid, *Then* and in such case, *Upon trust* that they the said [*sureties*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, do and shall at any

Declaration, that the sureties shall stand possessed of the leasehold premises and furniture, upon the trusts following, *viz.*

If the assignor pays to the sureties the sum of —*l.* on the —— day of ——, the sureties shall re-assign the premises, &c. to him.

But if he shall make default, then they shall sell the premises, &c. as they think proper.

ASSIGNMENT OF LEASEHOLDS, &C. FOR INDEMNIFYING SURETIES AGAINST THE PAYMENT OF NOTES.

time thereafter, at their or his own discretion, absolutely sell and dispose of the said messuage or tenement, household goods and furniture, and premises hereby respectively assigned, or intended so to be, and every or any of them, and every or any part thereof, either together or in parcels, and either by public auction or private contract, to any person or persons whomsoever, who shall be willing to become the purchaser or purchasers of the same, for the best price or prices which can or may be reasonably had or obtained for the same; *And* do and shall, for the purposes aforesaid, enter into, make, and execute all such contracts, agreements, acts, deeds, assignments, and assurances, as to the said [*sureties*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall seem reasonable; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that all such contracts, agreements, acts, deeds, assignments, and assurances as shall be entered into, made, and executed by the said [*sureties*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall, whether the said [*assignor*], his executors, administrators, or assigns, shall, or shall not join therein or assent thereto, be equally valid and effectual, and shall bind the said [*assignor*], his executors, administrators, and assigns, and all persons whomsoever claiming, or to claim by, from, through or under, or in trust for him, them, or any of them; AND IT IS HEREBY FURTHER AGREED AND DECLARED between, &c., that the receipt or receipts in writing of the said [*sureties*], or the survivor of them, or the executors, administrators, or assigns of such survivor, for the monies to arise from such sale or sales as aforesaid, shall discharge the person or persons paying the same from being answerable or accountable for the misapplication or nonapplication of the monies in such receipt or receipts expressed or acknowledged to have been received, or from being in anywise obliged or concerned to see to the application thereof; *And* that it shall not be necessary for any purchaser or purchasers to enquire into the necessity or propriety of any such sale or sales as aforesaid, or to ascertain whether default in paymemt of the said sum of pounds has been actually made or not; AND IT IS HEREBY

Declaration that sales by the sureties shall be binding on the assignor.

Declaration that the sureties' receipts shall be sufficient discharges.

Declaration of trust of the

ASSIGNMENT OF LEASEHOLDS, &C. FOR INDEMNIFYING SURETIES AGAINST THE PAYMENT OF NOTES.

AGREED AND DECLARED between and by the said parties to these presents, that the said [*sureties*], their executors, administrators, and assigns, shall stand and be possessed of, and interested in, the monies to arise from such sale or sales as aforesaid, *Upon* and for the trusts, intents, and purposes hereinafter declared concerning the same, (that is to say); *Upon trust* that they the said [*sureties*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, with and out of the said monies, in the first place, pay, retain, and discharge all costs, charges, and expenses which shall be occasioned by carrying the trusts hereby created into execution, and all such sums of money, losses, costs, charges, damages, and expenses (if any) as the said [*sureties*], or any of them, or their or any of their executors or administrators, or their or any of their estates or effects, shall or may pay, bear, incur, sustain, or be put unto, for, or by reason, or on account of the said promissory notes which have been so given by the said [*assignor*] and [*sureties*], as aforesaid, or any of them; *And* in the next place, retain or pay to themselves or himself the said sum of pounds hereby secured; *And* do and shall pay the surplus or residue of the said monies so to arise from such sale or sales as aforesaid, and which shall remain after answering the several purposes hereinbefore mentioned, unto the said [*assignor*], his executors, administrators, and assigns, for his and their own absolute use and benefit; (*Proviso for quiet enjoyment by the* [*assignor*] *until default*;) AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the said [*sureties*], their executors, administrators, or assigns, shall stand possessed of the said sum of pounds hereby secured to them as aforesaid, *In trust* to pay and apply the same in discharge of the several sums of money (amounting to the like sum of pounds) secured by the said promissory notes, which have been so given by the said [*assignor*] and [*sureties*] as hereinbefore is mentioned and recited; AND the said [*assignor*], &c. (*Usual Covenants for Title*) (*d*). IN WITNESS, &c.

monies which shall arise from the sales made under these presents.

Declaration of trust of the sum of ——*l.* hereby secured.

(*d*) See Index, LEASEHOLDS, COVENANTS for TITLE.

ASSIGNMENT OF FURNITURE, &C. FOR SECURING THREE SEVERAL DEBTS.

ASSIGNMENT *of Household Furniture, Farming Stock, &c. to* TRUSTEES, *for securing to Three several Creditors, the several Sums due to them from the Assignor* (*a*).

Parties.

THIS INDENTURE, made, &c. 18 , BETWEEN the Right Honorable John Lord [ ], Baron of , in the county of , of the first part; [A. B.] of, &c. [C. D.] of, &c. gent., and [E. F.], [G. H.], and [I. K.], all of, &c., silversmiths and jewellers, of the second part; [*one trustee*] of, &c. and [*other trustee*] of, &c. of the third part; and [*attorney to take and deliver possession of the furniture, &c.*] of, &c. of the fourth part:

Recites that John Lord ( ) is indebted to the parties of the second part, and has agreed to assign his furniture, &c. to trustees for them.

WHEREAS the said John Lord [ ] is indebted to the said several persons, parties hereto of the second part, in the several sums of money set opposite to their respective names, in the schedule hereunder written or hereunto annexed (*b*), and being unable immediately to pay the said debts, hath agreed to secure the same by an assignment to the said [*trustees*], in the manner hereinafter expressed, of the household furniture, live and dead stock, articles,

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Stamp.

(*a*) A deed for securing five or more debts, is liable only to the common deed stamps; but a deed for securing a less number of debts than five, is liable to a mortgage *ad valorem* duty in respect of each debt secured. See 55 Geo. III, c. 184. *Schedule*, part I. MORTGAGE.

(*b*) Where the number of creditors is so small, it is better to state the amount of the debts in the recital, than have a schedule for them. In such case, the recital may run thus:

"AND WHEREAS the said [*assignor*] is indebted to the said [A. B.], in the sum of pounds, to the said [C. D.], in the sum of pounds, and to the said [E. F.], [G. H.], and [I. K.], in the sum of pounds *And* being, &c." (*as above*).

ASSIGNMENT OF FURNITURE, &C. FOR SECURING THREE SEVERAL DEBTS.

things, and effects hereinafter mentioned, and intended to be hereby assigned; NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain, by the said [*trustees*] to the said John Lord [ ] paid, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HE the said John Lord [ ], at the request, and by the direction, and upon the nomination of the said several persons, parties hereto of the second part, (testified by their severally executing these presents,) *Hath* granted, bargained and sold, assigned, transferred, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, transfer, and set over, unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT and those the household furniture of every description, paintings, prints, linen, china, glass, wines, ale, store casks, deer in the park, live stock upon the farm, growing crops, grain, hay, husbandry implements, and other effects, the property of him the said John Lord [ ], in and about his mansion house called Court, in the said county of , and upon the farm near or adjoining to the said mansion house, in the occupation of the said John Lord [ ], (all which furniture, pictures, live and dead stock, articles, things, and effects, have been valued by [X. Y.], of, &c. appraiser, at the sum of pounds, and are enumerated in an inventory which hath been made thereof by the said [X. Y.], and which accompanies the said valuation); AND ALSO all the books in the said mansion house called [ ] Court, and described in the catalogue thereof, now being in the library of the said mansion house (*c*); *And* all the right,

Witnessing part.

The assignor assigns to the trustees,

household furniture, &c.

(*c*) In the description of the household furniture, the "Inventory" is not made a part of the description of the property assigned, and the reference to it would, probably, not make it necessary that the inventory should be stamped; but in the description of the books, the catalogue is referred to in terms which make it part of the deed, or necessary to it, for the purpose of ascertaining what books passed under the assignment; in which case it is liable to a stamp. Where furniture, books, or other property of the like kind, is assigned

Reference to inventory.

ASSIGNMENT OF FURNITURE, &C. FOR SECURING THREE SEVERAL DEBTS.

title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said John Lord [ ], in, to, out of, or upon the said furniture, pictures, live and dead stock, articles, things, effects, and books hereby assigned, or intended so to be, and every of them, and every part thereof respectively; To HAVE, HOLD, RECEIVE, AND TAKE the said furniture, &c. hereby assigned, or intended so to be, and every of them, and every part thereof respectively, unto the said [*trustees*], their executors, administrators, and assigns, absolutely; *But* nevertheless upon and for the trusts, intents, and purposes, hereinafter expressed and declared concerning the same, (that is to say); *If* the said John Lord [ ], his heirs, executors, and administrators, shall and do, on the day of now next ensuing, well and truly pay or cause to be paid, to the said several persons, parties hereto of the second part respectively, or their respective executors, administrators, or assigns, the several sums in the schedule hereunder written, set opposite to the respective names of the said several persons, parties hereto of the second part, together with all interest and arrears of interest for the same, or so much of the said sums and interest as shall then be due and owing, without any deduction or abatement whatsoever for or by reason of any present or future taxes, charges, assessments, cause, matter, or thing whatsoever, *Then*, and in such case, *Upon trust* that they the said [*trustees*], their executors, administrators, or assigns, do and shall, at the request and expense of the said John Lord [ ], his executors, administrators, or assigns, reassign and assure the said household furniture, pictures, &c. hereby assigned, &c. unto the said John Lord [ ], his executors, administrators, and assigns, for his and their own use and benefit; *But* if the said

Habendum to the trustees absolutely, but upon the trusts hereinafter declared, *viz.*

If the debts are paid on the — day of ———, then to re-assign the furniture, &c. to the assignor;

but if they are not so paid,

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generally, and not enumerated in a schedule, it is advisable to have an inventory or catalogue of it signed by some respectable persons who may hereafter certify to what property was on the premises at the time of the assignment; but it is safest not to refer to the inventory or catalogue in the deed. See 55 Geo. III. c. 184. Sched. Part I. SCHEDULE.

ASSIGNMENT OF FURNITURE, &C. FOR SECURING THREE SEVERAL DEBTS.

John Lord [ ], his heirs, executors, or administrators, shall make default in payment of the said sums and interest, or any of them, or any part thereof respectively, at the time and in the manner hereinbefore mentioned, *Then*, and in such case, *Upon trust* that they the said [*trustees*], their executors, administrators, and assigns, do and shall, if so required by the said several persons, parties hereto of the second part, whose debts shall not have been wholly satisfied, or any of them, or their or any of their executors, administrators, or assigns, absolutely sell and dispose of the said furniture, pictures, &c. hereby assigned, or intended so to be, or any of them, or any part thereof respectively, by public auction or private contract, and altogether or in parcels, as they the said [*trustees*], &c. shall think fit, with power to purchase in the same respectively at any public auction, without liability for the loss (if any), which shall be sustained thereby; *And* for effectuating the said sale or sales, do and shall enter into, make, and execute all such contracts, assignments, deeds, and things, as to them shall seem reasonable; AND IT IS HEREBY AGREED AND DECLARED between and by the parties to these presents, that all contracts, agreements, assignments, deeds, and things, which shall be so entered into, made, and executed by the said [*trustees*], their executors, administrators, or assigns, or any of them, shall be entered into, made, and executed, either with or without the concurrence of the said John Lord [ ], his executors, administrators, or assigns, and shall, although the said John Lord [ ], his executors, administrators, or assigns, shall not join therein, or assent thereto, be equally valid and effectual, and bind the said John Lord [ ], his executors, administrators, and assigns, and all persons claiming by, from, or under, or in trust for him, them, or any of them; *And* that the receipt or receipts of the said [*trustees*], their executors, administrators, or assigns, or any of them, for any money arising from such sale or sales as aforesaid, shall discharge the person or persons to whom the same shall be given, from all responsibility for the misapplication, and all obligation of seeing to the application of the money mentioned to be received, or of enquiring whether the same shall be wanted for the purposes

then to sell the furniture, &c. and out of the money arising thereby to pay them.

Agreement that the sales and other acts of the trustees shall be valid, without the assignor's concurrence;

and that their receipts shall be sufficient discharges.

ASSIGNMENT OF FURNITURE, &C. FOR SECURING THREE SEVERAL DEBTS.

aforesaid, and whether any sale or sales which shall have been made, was or were actually necessary for the said purposes: AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by the parties to these presents, that the said [*trustees*], their executors, administrators, and assigns, do and shall, with and out of the money which shall come to their hands by such sale or sales as aforesaid, in the first place, reprize and make good to themselves all costs, charges, and expenses which shall be incurred by them in or about such sale or sales, or in anywise attending the same; *And* in the next place, pay to the said several persons parties hereto of the second part, or their respective executors, administrators, or assigns, rateably and proportionably, and without any preference or priority, the several sums set opposite to the respective names of the said parties hereto of the second part, in the schedule hereunder written, and all arrears of interest for the same, or so much of the said sums and interest as shall be then due and owing; *And* lastly, do and shall pay the surplus (if any) of the said money so to arise by such sale or sales as aforesaid, and which shall remain after answering the purposes aforesaid, to the said John Lord [ ], his executors, administrators, or assigns, for his and their own absolute use and benefit; AND the said John Lord [ ], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, in manner following, (that is to say); that he the said John Lord [ ], now hath in himself good right, full power, and lawful and absolute authority, to assign the said furniture and other premises hereby assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts and in manner aforesaid, and according to the true intent and meaning of these presents; *And* that he the said John Lord [ ], his executors or administrators, shall not nor will, at any time or times hereafter, do or execute, or willingly permit or suffer any act, matter, or thing whatsoever, whereby or by reason or means whereof the said [*trustees*], their executors, administrators, or assigns, may, can, or shall be in anywise pre-

Declaration of trust of the monies to arise from the sale of the furniture, &c. if sold.

Covenants for title.

vented or hindered from having, receiving, or taking, for the purposes of these presents, the said furniture, and other premises hereby assigned, or intended so to be, or any of them, or any part thereof respectively; *And further*, that he the said John Lord [ ], his executors or administrators, shall and will, at any time or times hereafter, upon every reasonable request of the said [*trustees*], their executors, administrators, or assigns, make, do, and execute, or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, and things, for the better and more effectually assigning, assuring, and confirming of the said furniture and other premises hereby assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, and for enabling them to have, receive, and take the same, for the purposes of these presents, as by the said [*trustees*], their executors, administrators, or assigns, or their or any of their counsel in the law, shall be reasonably devised, or advised and required; PROVIDED ALWAYS, and it is hereby agreed and declared by the parties to these presents, that it shall be lawful for the said [*trustees*], their executors, administrators, and assigns, out of the trust premises to reimburse themselves, and allow their co-trustees all costs, charges, and expenses attending or in anywise relating to the execution and performance of the trusts hereby in them respectively reposed; AND the said John Lord [ ], *Hath* nominated, constituted, and appointed, *And* by these presents *Doth* nominate, constitute, and appoint the said [*attorney*] his true and lawful attorney, for him and in his name and stead to take full, quiet, and peaceable possession, of ALL and singular the furniture, pictures, &c. hereby assigned, or intended so to be, or some part thereof in the name of the whole, and then to deliver full, quiet, and peaceable possession of all and singular the said furniture and premises, or some part thereof in the name of the whole, unto the said [*trustees*], for the purposes of these presents. IN WITNESS, &c. (*d*).

ASSIGNMENT OF FURNITURE, &C. FOR SECURING THREE SEVERAL DEBTS.

Short clause for the indemnity of the trustees.

Appointment of an attorney to take and deliver possession of the furniture and other premises hereby assigned.

(*d*) For a mortgage of furniture, and observations on such a mort-

ASSIGNMENT OF FURNITURE, &C. FOR SECURING THREE SEVERAL DEBTS.

Memorandum to be Indorsed.

Memorandum of the delivery of possession of the furniture, &c. to the trustees, for the purposes of the above deed.

BE IT REMEMBERED, that on this day of , in the year , full and peaceable possession of all and singular the furniture, &c. in the within written indenture mentioned, and thereby assigned, was had and taken by the within named [*attorney*], and was in the name of the said John Lord [ ], delivered by the said [*attorney*] to the within named [*trustees*], by the said [*attorney*] delivering to the said [*trustees*] one chair in the name of the whole of the said furniture, pictures, &c. *To have*, hold, and possess the same unto the said [*trustees*], their executors, administrators, and assigns, for the purposes of the within written indenture, in the presence of

[L. M.]
[N. O.]

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gage when made by a person liable to the bankrupt law, see title MORTGAGES, and Index, FURNITURE. MORTGAGE.

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF A POLICY AS A SECURITY.

DEMISE *for* YEARS *of Freehold Hereditaments by a* TENANT *for* LIFE, *and* ASSIGNMENT *of an* ANNUITY, *payable during his Life, and of a* POLICY *of* ASSURANCE *effected on his Life, to* TRUSTEES, *for securing the Payment of a Sum of Money, with Interest.*

THIS INDENTURE, made, &c., BETWEEN [*borrower*] of, &c. of the first part; [*lender*] of, &c. of the second part; and [*one trustee*] of, &c., and [*other trustee*] of, &c. of the third part; WHEREAS [A. B.], late of, &c., gent., but since deceased, was at the time of making his will, hereafter recited, and from thenceforth to the time of his decease, seised of, or well entitled to, for an estate of inheritance in fee simple in possession, the messuage or tenement or inn, hereditaments, and premises, hereinafter described, and intended to be hereby demised, and their appurtenances, and being so seised or entitled as aforesaid, did, in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date on or about the day of , and thereby gave and devised the said messuage or tenement or inn, hereditaments, and premises, and their appurtenances, unto his second son, the said [*borrower*], and his assigns, during his life, with remainders over, as in the said will are mentioned; *And* the said testator by his said will gave and bequeathed unto the said [*borrower*] and his assigns, during his life, an annuity or yearly sum of pounds, to be issuing and payable out of and chargeable upon certain estates in his said will particularly described, and thereby devised to his third son [ ], as therein mentioned, and their appurtenances, and to be paid by two equal half yearly portions in every year, and the first half yearly payment thereof to be made at the expiration of six calendar months next after the decease of the said testator; *And* the said testator appointed

Parties.

Recites the will whereby the freeholds are devised to the borrower for his life, and the annuity is bequeathed to him for his life;

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF A POLICY AS A SECURITY.

his eldest son, [ ], and his friend [ ], and [ ], joint executors of his said will; (*Recite the death of testator and probate of his will, as ante, p.* 258;) AND WHEREAS, by a policy or instrument of assurance, under the hands and seals of three of the directors of the Assurance Society, London, bearing date the day of , and numbered , the stocks and funds of the said society were (in consideration of the annual premium of pounds paid, and to be paid by the said [*borrower*], as therein is mentioned) made liable to the payment to the executors, administrators, or assigns of the said [*borrower*], within three calendar months next after the decease of him the said [*borrower*] should be made known at the office of the said society, of the sum of pounds; AND WHEREAS the said [*borrower*] having occasion for the sum of pounds, hath applied to the said [*lender*] to advance and lend him the same, which he hath consented and agreed to do, upon having the repayment thereof, with interest for the same, after the rate of five pounds for one hundred pounds by the year, secured by the covenant of the said [*borrower*] hereinafter contained, and by a demise and assignment in manner hereinafter mentioned, of the messuage or tenement or inn, hereditaments, annuity, or yearly sum of pounds, policy and premiums hereinbefore referred to: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*lender*] to the said [*borrower*], in hand well or truly paid at or immediately before the sealing and delivering of these presents (the receipt of which said sum of pounds the said [*borrower*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*lender*], his executors, administrators, and assigns), HE the said [*borrower*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lender*], his executors, administrators, and assigns, that he the said [*borrower*], his heirs, executors, or administrators, or some or one of them, shall and will

The death of the testator and probate of his will;

a policy of assurance on the life of the borrower;

and the agreemen to lend the borrower —*l.* on the security aftermentioned.

First witnessing part.

The borrower covenants with the lender for repayment of the money lent with interest.

on the day of , which will be in the year 18 , well and truly pay or cause to be paid to the said [*lender*], his executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain and Ireland, *And* shall and will in the mean time pay or cause to be paid to the said [*lender*], his executors, administrators, or assigns, interest for the said sum, after the rate of five pounds for one hundred pounds by the year, to be computed from the day of the date of these presents, by two equal half yearly payments, on the day of , and the day of in each year, without any deduction or abatement out of the same, or any part thereof, for or in respect of any present or future taxes, rates, charges, assessments, or impositions, or any matter, cause, or thing whatsoever: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of pounds, by the said [*lender*] to the said [*borrower*] paid as hereinbefore is mentioned; *And also* in consideration of the sum of ten shillings of like lawful money, by the said [*trustees*] to the said [*borrower*] paid, at &c. (the receipt, &c.), HE the said [*borrower*], at the request and upon the nomination of the said [*lender*], (testified, &c.), *Hath* granted, bargained, sold, and demised, *And* by these presents *Doth* grant, bargain, sell, and demise unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT messuage or tenement, or inn, situate, &c. (*parcels*), *Together* with, &c. (*general words*); TO HAVE AND TO HOLD the said messuage or tenement, or inn, hereditaments, and all and singular other the premises hereby demised, or intended so to be, and their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, for and during the term of years, to be computed from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, if the said [*borrower*] shall so long live, at the yearly rent of a pepper-corn, if the same shall be lawfully demanded; *But* nevertheless upon the trusts, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same: AND THIS INDENTURE

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF POLICY AS A SECURITY.

Second witnessing part.

The borrower demises to the trustees,

The freehold hereditaments devised to him for his life.

Habendum to the trustees for ——— years, if the borrower shall so long live,

upon the trusts after declared.

Third witnessing part.

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF POLICY AS A SECURITY.

FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations hereinbefore expressed, HE the said [*borrower*], at the request, and upon the nomination of the said [*lender*] (so testified as aforesaid), *Hath* granted, bargained, sold, assigned, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, and set over unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said annuity or yearly sum of pounds, so given and bequeathed to the said [*borrower*] and his assigns, for his life, by the said hereinbefore recited will of the said [A. B.] as aforesaid, together with all the powers and remedies of him the said [*borrower*], for recovering and compelling payment of the same when and in case the same, or any part thereof, should be in arrear; *And* all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*borrower*], in, to, out of, or upon the same; TO HAVE, HOLD, RECEIVE, AND TAKE the said annuity or yearly sum of pounds, and all and singular other the premises hereby firstly assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns absolutely; *But* nevertheless upon the trusts, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations aforesaid, HE the said [*borrower*], at the request and upon the nomination of the said [*lender*], (so testified as aforesaid), *Hath* granted, bargained, sold, assigned, and set over, *And* by these presents *Doth*, &c. unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said hereinbefore recited policy of assurance, bearing date the day of , and the said sum of pounds, assured thereby, and all other monies, benefits, and advantages whatsoever, to be had, recovered, or obtained, under or by virtue of the same policy; *And* all the right, &c., *Together* with full power, &c. (as *ante*, p. 205. 210); TO HAVE, HOLD, RECEIVE, AND TAKE the said policy, monies, and all and singular other the premises hereby secondly as-

The borrower assigns to the trustees

the annuity or yearly sum of —*l.*

Habendum to the trustees absolutely, but upon the trusts after mentioned.

Fourth witnessing part.

The borrower assigns to the trustees,

the policy, and the monies assured thereby.

Habendum unto the trustees absolutely, but upon the

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF POLICY AS A SECURITY.

signed, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns absolutely; *But* nevertheless upon the trusts, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the said [*trustees*], their executors, administrators, and assigns, shall stand and be possessed of and interested in the said messuage or tenement, or inn, hereditaments, annuity, or yearly sum of pounds, policy, monies, and premises hereby respectively demised and assigned, or intended so to be, and every of them, *Upon* the trusts, and in manner following, (that is to say;) *Upon trust*, if the said [*borrower*], his heirs, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid to the said [*lender*], his executors, administrators, or assigns, the said sum of pounds and interest, so covenanted to be paid as aforesaid, at the times and in manner hereinbefore mentioned, and according to the true intent and meaning of these presents; *Then*, and in such case, that they the said [*trustees*], their executors, administrators, or assigns, do and shall at any time thereafter, at the request and expense of the said [*borrower*], or his assigns, assign or surrender the said messuage or tenement, or inn, hereditaments, and premises hereby demised, or intended so to be, and their appurtenances, unto the said [*borrower*], or his assigns, or as he or they shall order or direct, for all the then residue and remainder of the said term of years therein, and re-assign the said annuity or yearly sum of pounds, and premises, hereby firstly assigned, or intended so to be, unto the said [*borrower*] and his assigns, or as he or they shall order or direct; *And* do and shall, at the request and expense of the said [*borrower*], his executors, administrators, or assigns, re-assign the said policy, monies, and premises hereby secondly assigned, or intended so to be, unto the said [*borrower*], his executors, administrators, and assigns absolutely, or as he or they shall order or direct (*a*); *And* do and shall make the said several as-

trusts after declared.

Declaration that the trustees shall stand possessed of the messuage, annuity, policy, and premises, upon the following trusts, *viz.*

If the borrower pays the money and interest hereinbefore covenanted to be paid, at the times hereinbefore mentioned, then, In trust to re-assign, &c.

(*a*) The remainder of this trust is usually added, in mortgages, at the

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF POLICY AS A SECURITY.

signments, free from all incumbrances whatsoever, made, done, or committed by them the said [*trustees*], or either of them, or their or either of their executors, administrators, or assigns, so as for the doing thereof they the said [*trustees*], their executors, administrators, or assigns, or any of them, be not compelled or compellable to go or travel from the place or places of their or any of their usual abode or dwelling; *But* if default shall, &c. *Then*, &c. (*Upon trust to sell, &c. with the usual declarations that sales by the trustees shall bind the borrower; that their receipts shall be sufficient discharges; and that out of the sale monies they shall pay the sum and interest secured; see ante*, p. 325. 333. 342:) PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that in the mean time, and until the said messuage or tenement, or inn, hereditaments, and premises hereby demised, or intended so to be, and their appurtenances, shall be assigned and surrendered to the said [*borrower*] or his assigns as aforesaid, or shall be sold and disposed of under or by virtue of the trust or provision hereinbefore for that purpose contained, the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall receive and take the rents, issues, and profits of the same messuage or tenement, or inn, hereditaments, and premises, and their appurtenances, as and when the same shall become payable; *And* shall, with and out of the same, in the first place, pay to the said [*lender*], his executors, administrators, or assigns, the interest which shall for the time being be due in respect of the said sum of pounds hereby secured as aforesaid; *And* in the next place, pay the premium or premiums, costs, and expenses, which shall be payable for keeping the said messuage or tenement, or inn, hereditaments, and premises, insured against loss or damage by fire, as hereinafter is provided, as the same shall become payable; *And* in the next place, pay the premium or premiums which shall be payable for keeping on foot the said policy of insurance hereinbefore assigned, or intended so to be, or any other

Proviso that until the messuage and premises demised shall be assigned or sold as aforesaid, the trustees shall receive the rents thereof, and thereout pay the interest on the sum secured;

the premiums for keeping the premises insured;

and the premiums payable for keeping the life of the borrower insured;

end of the proviso for redemption; but in trust-deeds it is most commonly omitted.

policy or policies by which the life of the said [*borrower*] shall be insured, as hereinafter is mentioned and provided, as the same shall become payable, together with all costs and expenses in any wise incident thereto; *And* shall pay the surplus or residue of the said rents, issues, and profits (if any) unto the said [*borrower*], or his assigns, for his or their own use and benefit; PROVIDED ALWAYS, and it is hereby also agreed and declared between and by the said parties hereto, that in the mean time, and until the said annuity or yearly sum of pounds and premises, hereby firstly assigned, or intended so to be, shall be either re-assigned, or sold and disposed of as aforesaid, the said [*trustees*], their executors, administrators, or assigns, shall receive and take the same as the same shall become due, and shall apply the same in such and the like manner as hereinbefore is mentioned with respect to the application of the rents and profits of the said messuage or tenement, or inn, hereditaments, and premises, hereby demised, or intended so to be; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if while any monies shall be owing on the security of these presents, the said messuage or tenement, or inn, hereditaments, and premises hereby demised, or intended so to be, or any part thereof, shall become untenanted, it shall be lawful for the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, by deed, to demise or lease the premises which shall so for the time being be untenanted, to any person or persons whomsoever, for any term or number of years not exceeding seven years, to take effect in possession, at the best yearly rent that can be reasonably obtained for the same, without taking any fine or foregift for the making thereof, so that there be contained in every such demise or lease, a covenant for payment of the rent thereby reserved, and a condition for re-entry on nonpayment of the same rent, or any part thereof, for the space of twenty-one days next after the same shall become due, and so that the lessee or lessees therein named do execute a counterpart of the same demise or lease, and be not in any manner made dispunishable for committing waste; PROVIDED ALWAYS, and it is hereby agreed and declared between

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF POLICY AS A SECURITY.

and shall pay the residue to the borrower or his assigns.

Proviso that until the annuity hereby assigned is re-assigned or sold, the same shall be applied as above mentioned with respect to the rents of the messuage, &c. hereby demised.

Power of leasing, if the premises become untenanted.

Proviso that no lease or sale shall be made

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF POLICY AS A SECURITY.

and by the said parties hereto, that the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall not make any lease or sale, under the powers hereinbefore for that purpose contained, against the consent of the said [*borrower*], or his assigns, without first giving to him or them notice in writing to pay off or pay in the said sum of pounds and interest hereby secured, or so much thereof as shall be then due, and waiting three calendar months for him or them so to do; PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties hereto, that while any monies shall remain due and owing on the security of these presents, the said [*borrower*], or his assigns, shall and will insure and keep insured, the said messuage or tenement, or inn, and other buildings hereby demised, or intended so to be, in the names or name of the [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, in insurance office, or in some respectable insurance office or offices in London or Westminster, against loss or damage by fire, for the sum of pounds, at the least; *And* that if he or they shall at any time neglect or refuse so to do, or to produce to the said [*lender*], his executors, administrators, or assigns, on being thereunto requested, the policy or policies by which such insurance shall be effected, with the last receipt given for the premium or premiums payable thereon, it shall be lawful for the [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, to insure and keep insured, in such names or name, and office or offices as aforesaid, the same messuage or tenement, or inn, and buildings, against loss or damage by fire, in any sum or sums of money the said [*lender*], his executors, administrators, or assigns, shall order or direct, not exceeding in the whole the sum of pounds; *And* to pay the premium or premiums, costs, and expenses payable thereon, out of the rents, issues, and profits, hereinbefore in that behalf mentioned; *And* that all monies which shall be received or recovered, under or by virtue of any such insurance or insurances against fire as aforesaid, shall, at the discretion of the said [*lender*], his executors, administrators, or assigns, be applied either in re-

under the aforesaid powers against the consent of the borrower, without first giving him three months' notice to pay off the debt.

Provision for keeping the messuage and premises demised insured against loss by fire.

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF POLICY AS A SECURITY.

pairing, rebuilding, and reinstating the premises which shall for the time being be destroyed or damaged by fire as aforesaid, or in paying the said sum of pounds and interest hereby secured, or so much thereof respectively as shall then remain due and owing; PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties hereto, that if while any monies shall remain due and owing on the security of these presents, the said policy of assurance hereby assigned, or intended so to be, or any policy or policies of assurance which shall be obtained under or by virtue of these presents, shall become void by the non-payment of the premium or premiums payable thereon, it shall be lawful for the said [*trustees*], or the survivors of them, or the executors, administrators, or assigns of such survivor, to insure and keep insured in their or his names or name, in the Union life assurance office, London, or in some other respectable assurance office or offices in London or Westminster, the life of the said [*borrower*], in the sum of pounds, *And* to pay the premium or premiums, costs, and expenses payable thereon, out of the rents, issues, and profits of the said messuage or tenement, or inn, hereditaments, and premises, hereinbefore demised, or intended so to be; *And* that they or he shall stand and be possessed of the said policy or policies, which shall be obtained or effected, as last aforesaid, upon the same trusts, and subject to the same provisoes and agreements in every respect, as are hereinbefore declared and contained of and concerning the said policy of assurance hereinbefore assigned, or intended so to be, or as near thereto as circumstances will permit; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the monies which shall be received or recovered upon or by virtue of the said policy of assurance hereinbefore assigned, or intended so to be, or any policy or policies to be obtained or effected on the life of the said [*borrower*] as aforesaid, shall be held and applied upon the like trusts, and in the like manner as are hereinbefore declared or mentioned, of or concerning the monies which shall arise from any such sale or sales as hereinbefore mentioned; (*Usual clauses for changing the trustees, and for their indemnity;*) AND the said [*borrower*] doth hereby for himself, his heirs, ex-

Provision for keeping the life of the borrower insured in the sum of —*l.* while any monies shall remain on this security.

Declaration that the monies received under the policies shall be held upon the same trusts as are before declared of the monies to be produced by sales as aforesaid.

Trustee clauses.

DEMISE BY TENANT FOR LIFE, AND ASSIGNMENT OF POLICY AS A SECURITY.

ecutors, and administrators, COVENANT, promise, and agree, with and to the said [*lender*], his executors, administrators, and assigns, and also with and to the said [*trustees*], their executors, administrators, and assigns, in manner following, (that is to say;) that he the said [*borrower*] is seised or entitled, for an estate of freehold during his own life, of or to the said messuage or tenement or inn, hereditaments, and premises, hereby demised, or intended so to be, and their appurtenances, *And* also the said annuity or yearly sum of pounds, and premises hereby firstly assigned, or intended so to be; *And* that the said policy of assurance hereby secondly assigned, or intended so to be, is a good and valid policy in the law, and not forfeited, assigned, surrendered, or in any manner avoidable; *And* that he the said [*borrower*], now hath in himself good right, full power, lawful and absolute authority, to demise and assign the said messuage or tenement, or inn, hereditaments, annuity, or yearly sum, policy, monies, and premises, hereby respectively demised and assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, or assigns, upon the trusts, and in the manner aforesaid, and according to the true intent and meaning of these presents; *And* that while any money shall remain due and owing on the security of these presents, he the said [*borrower*] shall and will well and truly pay or cause to be paid, the premium or premiums which shall be payable for keeping on foot the said policy of assurance hereby assigned, or intended so to be, and all and every other the policy or policies, which shall be obtained or effected under or by virtue of the provisions hereinbefore in that behalf contained, as and when the same premium or premiums shall respectively become payable; *And further*, that it shall and may be lawful to and for the said [*trustees*], their executors, administrators, and assigns, from time to time, &c. (*Covenants for quiet enjoyment, and further assurance*). IN WITNESS, &c.

Covenants from the borrower with the lender and the trustees,— that he is entitled for his life to the messuage demised, and the annuity assigned;

that the policy is valid;

that he has good right to demise and assign the messuage, annuity, and policy;

that he will keep on foot the policy, and all other policies to be obtained as aforesaid;

and for quiet enjoyment and further assurance.

CONVEYANCE OF AN ESTATE FOR IMMEDIATE SALE, TO PAY A DEBT.

CONVEYANCE *of an Estate to* TRUSTEES, *to be* IMMEDIATELY *sold, and the Produce to be applied in Payment of a* DEBT *secured thereon by way of Mortgage, and the Residue (if any) to be paid to the* OWNER *of the Estate: (with Variations for the Circumstance of the Conveyance being made in Trust to carry into Effect a Contract for Sale).*

THIS INDENTURE, made the day of , 18 , BETWEEN [*owner*] of, &c. of the one part, and [*one trustee*] of, &c. and [*other trustee*] of, &c. of the other part; WHEREAS the said [*owner*] is seised of or entitled to the manor, messuages, farms, and other hereditaments hereinafter described, and intended to be hereby granted and released, and their rights, members, and appurtenances, for an estate of inheritance in fee simple in possession, free from all incumbrances whatsoever (*a*), save and except a debt or sum of pounds due and owing to [A. B.] of, &c. Esq. on the security of a certain indenture of demise by way of mortgage, bearing date the day of , and made, or expressed to be made, between the said [*owner*], of the one part, and the said [A. B.] of the other part, and an arrear of interest due thereon, and to a term of five hundred years created in the said manor, messuages, farms, and hereditaments, by the same indenture, for securing the said debt or sum and interest (*b*); AND WHEREAS the said [*owner*] is desirous

Parties.

Recites that the owner is seised in fee of the manor, &c. after-mentioned, free from incumbrances, except a mortgage for —*l.*;

that the owner is desirous that

(*a*) It is more correct to recite the conveyance to the owner, and then the mortgage deed in the usual form. See pp. 203. 215. 216.

(*b*) Where the conveyance is made to carry an agreement for sale into effect, recite first the conveyance to the owner, and then the contract for sale. For recitals of sales by private contract, and by public auction, see Vol. VII, p. 256. 334. 371. 398. 511. and Index, CONTRACTS FOR SALE.

CONVEYANCE OF AN ESTATE FOR IMMEDIATE SALE, TO PAY A DEBT.

the manor, &c. should be sold, and the mortgage-debt paid; and being about to leave England, hath agreed to convey the manor, &c. to trustees for those purposes, as after-mentioned.

that the said manor, messuages, farms, and hereditaments, of or to which he is so seised or entitled as aforesaid, should be sold, and that the said debt or sum of pounds, so secured to the said [A. B.] as aforesaid, should be paid off and discharged; but being about to leave England for the continent on business which may prevent his return for some time, it will be impracticable for him to carry such desires into effect himself; *And* he hath therefore requested the said [*trustees*] to become trustees for him for those purposes, and with their consent hath agreed to make and execute to them the conveyance hereinafter contained, with such powers as are hereinafter mentioned (*c*): NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and for carrying the desires hereinbefore mentioned into effect, and (*nominal consideration from the trustees to the owner*), HE the said [*owner*] *Doth* by these presents grant, bargain, sell, release, and confirm unto the said [*trustees*], (in their actual possession, &c.), and their heirs, ALL THAT the manor, &c. (*parcels*), TOGETHER with, &c. (*general words for manors*), *And* the reversion, &c. *And* all the estate, &c.; TO HAVE AND TO HOLD the said manor, messuages, farms, and all and singular other the hereditaments hereby granted and released, or intended so to be, and every part

Witnessing part.

The owner conveys to the trustees,

parcels.

Habendum to the trustees in fee,

(*c*) Where the object of the deed is to carry a contract into effect, the following recitals may be introduced here, instead of the above recital:—

"AND WHEREAS the said recited contract or agreement cannot be immediately carried into effect, as the title of the said [*owner*], to the hereditaments and premises agreed to be sold, has not yet been satisfactorily deduced or made out; AND WHEREAS the said [*owner*] intends shortly to leave England for the East Indies, and hath therefore proposed and agreed to convey the said messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and so agreed to be sold as aforesaid, and their appurtenances, unto the said [*trustees*], their heirs and assigns, upon the trusts, and with the powers hereinafter declared and contained."

thereof, with their and every of their rights, members, and appurtenances, (subject and without prejudice to the said mortgage so made to the said [A. B.], his executors, administrators, and assigns as aforesaid, and to the payment of the principal monies and interest secured thereby,) unto the said [*trustees*], and their heirs, *To the use* of them the said [*trustees*], their heirs and assigns for ever; *But* nevertheless upon and for the trusts, intents, and purposes hereinafter expressed or declared of and concerning the same, (that is to say) (*d*); *Upon trust* that they the said

CONVEYANCE OF AN ESTATE FOR IMMEDIATE SALE, TO PAY A DEBT.

In trust to sell, &c.

(*d*) Where the trust is to carry a contract for sale into effect, the following form may be used:—

"*Upon trust*, in case it shall appear on further investigation, that the title of the said [*owner*] to the said messuages, &c. hereby, &c. is good and marketable, or such as the said [*purchaser*], his heirs or assigns, shall agree to accept, that they the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, do and shall complete and carry into effect the said hereinbefore recited contract or agreement, *And* on payment of the said purchase money or sum of pounds, convey and assure the said messuages or tenements, lands, hereditaments, and premises, and their appurtenances, unto and to the use of the said [*purchaser*], his heirs or assigns, or to such uses, and in such manner, as he or they shall in that behalf order or direct; *But* if on such investigation as aforesaid, the title of the said [*owner*], to the said messuages, &c. shall prove to be unmarketable, or such as the said [*purchaser*], his heirs or assigns, shall and properly may decline to accept, *Then*, and in such case, *Upon trust* that they the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, do and shall with all convenient speed, make sale, and dispose of the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances, either together and in one lot, or in parcels and several lots, and either by public auction or private contract, as they or he shall think fit, and for such price or prices, and upon and under such terms, conditions, stipulations, and agreements, in regard to the title and the

Upon trust, if the title is accepted, to carry the contract for sale into effect, and convey to the purchaser;

but otherwise to make a fresh sale, and convey to future purchaser.

CONVEYANCE OF AN ESTATE FOR IMMEDIATE SALE, TO PAY A DEBT.

[*trustees*], or the survivor of them, or the heirs or assigns of such survivor, do and shall, with all convenient speed, absolutely sell and dispose of the said manor, &c. hereby, &c. and their rights, members, and appurtenances, either by one lot or in several lots, and either by public auction or, &c. (*Trusts for sale; declaration that the agreements and conveyances of the trustees shall be binding, without the owner's further concurrence; that the trustees' receipts shall be sufficient discharges; and that the trustees shall, out of the purchase monies and the rents, until a*

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evidence to be provided and furnished in support thereof, or otherwise, as to them or him shall seem necessary, expedient, or proper; *And* for the purposes aforesaid, do and shall enter into, &c. (*as ante*, p. 332.); AND the said [*owner*]* doth hereby declare and agree, that it shall be lawful for the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor, (if they or he shall so think fit,) to rescind, annul, and make void, or join in rescinding, annulling, and making void, the said hereinbefore recited contract or agreement, or any other contract or agreement which may hereafter be entered into for the sale of the said hereditaments, or any of them; *And* also to make or consent to such alterations and variations in the terms and conditions of the said contracts and agreements, or any of them, as they or he shall consider reasonable and proper; *And* in the execution of the aforesaid trusts, to consult or employ such attornies, solicitors, counsel, estate-agents, and other persons, as they or he shall think fit, and to pay to such attornies, solicitors, counsel, estate-agents, and other persons, such fees and other recompense, costs, charges, and expenses, as shall be necessary, or they or he shall deem proper; *And* also to institute, carry on, and take and adopt all such actions, suits, and other proceedings at law or in equity, for enforcing the performance of

Power to the trustees to rescind contracts, or alter the terms of them, and to employ attornies, counsel, &c.

also to institute actions, suits, &c.

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* Where the conveyance is merely between the owner of the estate and his own trustees, it seems more proper to make the owner alone "declare and agree," &c. than to make both parties join in the declaration.

CONVEYANCE OF AN ESTATE FOR IMMEDIATE SALE, TO PAY A DEBT.

sale, retain and satisfy the costs and expenses of the trust, and discharge the mortgage debt and interest, and pay the residue to the owner, his executors, administrators, or assigns, or as he or they may direct (*e*)): PROVIDED ALWAYS, and it is hereby agreed and declared, &c. (*Power for surviving or continuing trustees to appoint new trustees, and clause for the indemnity of trustees, see ante*, p. 8, and Vol. VIII, p. 262. 511, 512): AND the said [*owner*] doth hereby, &c. (*Covenants for title, as ante*, p. 330. 334) IN WITNESS, &c.

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the said hereinbefore recited contract or agreement, or any other contract or agreement for the purchase of the said hereditaments and premises, or any of them, or for recovering and obtaining possession of the said hereditaments and premises, or any of them, or the payment of the purchase money for the same or any of them, or for any other purpose connected with the execution of the trusts of these presents, as they or he, in their or his own discretion, shall judge expedient or proper; *And* the said [*owner*] doth hereby declare," &c. (*Declarations, provisions, and covenants, nearly as in the above precedent.*)

(*e*) See forms of such trusts, *ante*, p. 325, 333, 342, and Index, TRUSTS FOR SALE.

CONVEYANCE AND ASSIGNMENT, FOR PAYMENT OF DEBTS GENERALLY.

CONVEYANCE *of* FREEHOLD *and* LEASEHOLD *Estates to* TRUSTEES, *for the Purpose of being* SOLD, *and the* PRODUCE *paid to* CREDITORS *generally; the Creditors not being Parties to the Deed: (with Variations where the Trusts are referred to as being declared in a separate Deed of even date.)* (*a*)

Parties.

Recites that the owner is indebted to divers persons, and for providing a fund for payment of his debts is de-

THIS INDENTURE, made the day of , BETWEEN [*owner*] of, &c. of the one part, and [A. B.] of, &c. and [C. D.] of, &c. of the other part: WHEREAS the said [*owner*] is indebted to divers persons in considerable sums of money, *And* for the purpose of providing a fund for the payment of all his debts, is desirous of conveying and assigning all his freehold and leasehold es-

(*a*) In general, where the purpose of a conveyance in trust to sell, is for the payment of creditors, it is advisable not to disclose the purpose on the face of the conveyance, as already noticed in the Introductory Observations to this title; but where the person making the conveyance is not subject to the bankrupt laws, and the trusts are not declared by reference to another deed to which the creditors are parties, there is no important objection to the disclosure in the conveyance of the manner in which the proceeds of the sale are to be applied. Where the person making the conveyance is a trader, the title under it is always dangerous, unless the conveyance be a conveyance within the 4th section of the late bankrupt act (6 Geo. IV. c. 16); and where the trusts of the money are declared by reference to a deed of composition to which the creditors are made parties, a difficulty occurs in regard to the sufficiency of the usual clause in the conveyance for making the trustees' receipts protect purchasers from liability to see to the application of their purchase monies, unless the creditors who execute the composition deed are also parties to the deed of conveyance.

A conveyance for the payment of debts generally, to which no creditor is a party, and in which no particular debt is mentioned, is considered as fraudulent against purchasers; see 27 Eliz. c. 4; 30 Eliz.

CONVEYANCE AND ASSIGNMENT, FOR PAYMENT OF DEBTS GENERALLY.

tates (*b*), unto the said [A. B.] and [C. D.], their heirs, executors, administrators, and assigns, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same; NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and for carrying the said desire of the said [*owner*] in this behalf into effect, and in consideration, &c. (*nominal consideration from* [A. B.] and [C. D.],) HE the said [*owner*] *Hath* granted, bargained, sold, released, and confirmed, *And* by, &c. unto the said [A. B.] and [C. D.], (in their actual, &c.) and their heirs (*c*), ALL the messuages, tenements, lands, and hereditaments, of or to which the said [*owner*], or any person or persons in trust for him, is or are seised or entitled for any estate of freehold and inheritance, or freehold only, in possession, reversion, remainder, or expectancy, in the counties of and , or elsewhere in England, with their and every of their appurtenances, *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages, tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, unto and to the use of the said [A. B.] and

sirous of vesting his freeholds and leaseholds in trustees, upon the trusts after mentioned.

First witnessing part.

Conveyance of the freeholds to the trustees,

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c. 18; *Gooch's case*, 5 Co. 60 a.; *Leech* v. *Leech*, 1 Cha. Ca. 249; *Wallwyn* v. *Coutts*, 3 Merivale, 707; and Rob. Vol. Conv. p. 335. It is a mere voluntary conveyance, and may be revoked by the person making it, and the trustees may, it is conceived, safely reconvey the estates as the grantor may direct; but if the trustees should refuse to make such reconveyance, it would seem that equity would not interfere, or restrain a sale.

(*b*) It is generally better to recite the conveyances and demises or assignments, or other instruments under which the owner claims the property, and to describe the estates in the recitals, or the operative parts, or by way of schedule; and it is, in most cases, advisable to take the conveyance of the freeholds, and the assignment of the leaseholds, by separate deeds.

(*c*) Where the property is particularly set forth, a general or sweeping description of this kind may be added, if there is the least reason to suppose that the owner has any other property than what is specially mentioned.

CONVEYANCE AND ASSIGNMENT, FOR PAYMENT OF DEBTS GENERALLY.

[C. D.], their heirs and assigns, in as full, ample, and beneficial a manner, as the said [*owner*], or his heirs, could or might have held or enjoyed the same messuages, tenements, lands, hereditaments, and premises, in case these presents, and the lease for a year hereinbefore mentioned or referred to, (or on which the same are grounded,) had not been executed; *But* nevertheless upon and for the trusts, intents, and purposes, hereinafter expressed and declared of and concerning the same: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for carrying the said desire of the said [*owner*] in this behalf into effect, and for the nominal consideration hereinbefore mentioned, HE the said [*owner*], *Hath* granted, bargained, sold, assigned, and set over, *And* by, &c. unto the said [A. B.] and [C. D.], their executors, administrators, and assigns, ALL the messuages, tenements, lands, and premises, of or to which he the said [*owner*], or any person or persons in trust for him, is or are possessed or entitled for any term or terms of years, either in possession, or by way of contingent or future interest, in the city of London, or in the county of Middlesex, or elsewhere in England, with their and every of their appurtenances; *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages, tenements, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, unto the said [A. B.] and [C. D.], their executors, administrators, and assigns, for and during all such estate, term, and interest, as the said [*owner*] hath therein, and in as full, ample, and beneficial a manner, as the said [*owner*], his executors or administrators, could or might have held and enjoyed the same, if these presents had not been executed; *But* nevertheless upon and for the trusts, intents, and purposes, hereinafter expressed and declared of and concerning the same; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the said [A. B.] and [C. D.], their heirs, executors, administrators, and assigns, shall stand and be possessed of, and interested in the said messuages, tenements, lands, hereditaments, and premises, hereby respectively granted and released and assigned, or intended so to be, and their appurtenances, upon the

for all the owner's estate, but upon the trusts, &c.

Second witnessing part.

Assignment of the leaseholds to the trustees for all the owner's terms and interest therein, but upon the trusts after declared.

Declaration that the trustees shall stand possessed of the freeholds and leaseholds, upon the trusts after-mentioned, *viz.*;

CONVEYANCE AND ASSIGNMENT, FOR PAYMENT OF DEBTS GENERALLY.

trusts following, (that is to say;) *Upon trust* that they the said [A. B.] and [C. D.], or the survivor, &c. (*Trust for sale, and declarations that sales by trustees shall be binding, and that the receipts of the trustees shall be sufficient discharges, see ante*, p. 332); AND the said [*owner*] doth hereby declare, direct, and agree, that the said [A. B.] and [C. D.], their heirs, executors, administrators, and assigns, shall stand and be possessed of and interested in the monies which shall arise from such sales and dispositions as aforesaid, and of and in the rents, issues, and profits of the said messuages, tenements, lands, hereditaments, and premises, hereby respectively granted and released, and assigned, or intended so to be, and their appurtenances, in the mean time, and until the same shall be sold and disposed of (*d*), upon the trusts hereinafter mentioned or declared, (that is to say;) *Upon trust* that they the said [A. B.] and [C. D.], or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, do and shall, with and out of the same, in the first place, pay, &c. (*the expenses of the sales and executing the trusts, see ante*, p. 333); *And* in the next place, pay and satisfy to the person or persons entitled thereto, all and

Declaration of trust of the monies to arise from the sales, and of the rents in the mean time.

(*d*) Where the trusts are declared by reference to another deed to which the creditors are parties, the following form may be used:

"AND IT IS HEREBY AGREED AND DECLARED, that the said [*trustees*], their heirs, executors, administrators, and assigns, shall stand and be possessed of, &c. (*the monies and rents, as above*), upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations expressed and contained of and concerning the same in and by a certain indenture already prepared and engrossed, and bearing, or intended to bear, even date with these presents, and made, or intended to be made, between the said [*owner*], of the first part; the said [*trustees*], of the second part; and the several other persons whose names and seals are intended to be thereunto subscribed and affixed (being respectively creditors of the said [*owner*]), of the third part." (*See note* (*a*), *ante*, p. 366).

Declaration of trust of the monies by reference to a deed of even date.

CONVEYANCE AND ASSIGNMENT, FOR PAYMENT OF DEBTS GENERALLY.

every the debts and sums of money which are now due and owing from the said [*owner*], to any person or pers n whomsoever, on any account or accounts whatsoever, together with all interest which shall for the time being be due and payable for or in respect of such of the said debts or sums as carry or bear interest, and all costs, charges, and expenses, which shall have been incurred in any actions, suits, or other proceedings, which may have been instituted for the recovery of the same debts or sums, or any of them; *And* do and shall pay the surplus or residue of the said monies, unto the said [*owner*], his executors, administrators, or assigns, as or in the nature of personal estate; AND the said [*owner*] doth hereby give and grant unto the said [A. B.] and [C. D.], and the survivor of them, and the executors and administrators of such survivor, full power and authority to pay and discharge the debts or sums of money due and owing by or claimed from him the said [*owner*] as aforesaid, upon such evidence as they or he shall think proper, and also to adjust and settle all accounts, reckonings, claims, and demands whatsoever, in anywise relating thereto, and to join in referring to arbitration all disputes and differences (if any), which may arise upon or in respect of such accounts, claims, and demands, or any of them; (*Covenants for title, and clause for changing trustees*). IN WITNESS, &c.

Power to the trustees to settle accounts, and the amount of debts, and to refer disputes to arbitration.

ASSIGNMENT OF A LEGACY FOR SECURING A SUM OF MONEY AND INTEREST.

Assignment of a Legacy, *payable after the Decease of the Testator's Widow, to a* Lender, *upon Trusts for securing a sum of Pounds and Interest.*

THIS INDENTURE, made the day of , Between [*borrower*] of, &c. of the first part; [E. L.] of, &c. [L. H.] of, &c. and [D. H.] of, &c. of the second part; and [*lender*] of, &c. of the third part; Whereas [T. L.], formerly of, &c. but now deceased, did, by his last will and testament in writing, bearing date on or about the day of , and duly proved in the Prerogative Court of , on or about the day of , give and bequeath unto his brother in law [T. T.], of, &c. a legacy or sum of pounds of sterling money, to be paid upon the decease of his (the said testator's) wife [S. C. L.]; *But* the said testator directed, that in case the said [T. T.] should die in the lifetime of the said [S. C. L.], then that the said legacy or sum of pounds should be paid to his son [W. T.]; *And* the said testator appointed the said [S. C. L.] and [T. T.] executrix and executor of his said will; And whereas the personal estate and effects of the said [T. L.], after payment of his debts and funeral and testamentary expenses, was found to be more than sufficient to answer and pay all the legacies or sums of money given and bequeathed by his said will; And whereas the said [T. T.] departed this life on or about the day of , leaving the said [W. T.] him surviving; And whereas by an indenture of assignment, bearing date on or about the day of , and made, or expressed to be made, between the said [W. T.], of the one part, and [X. Y.], therein described, of the other part, the said [W. T.] did, (for the considerations therein mentioned) bargain, sell, assign, transfer, and set over unto the said [X. Y.], his executors, administrators, and assigns, *All that* the said

Parties.

Recites will of [ ] by which the testator bequeathed a legacy of —*l.* to T. T. to be paid on the decease of testator's wife;

but in case he should die during her life, then to his son W. T.

That the testator's personal estate, after payment of his debts, &c. was more than sufficient to pay the legacies.

Assignment of the legacy by W. T. to X. Y. by way of sale;

ASSIGNMENT OF A LEGACY FOR SECURING A SUM OF MONEY AND INTEREST.

legacy or sum of pounds, sterling money, to which he the said [W. T.] was entitled under or by virtue of the said will of the said [T. L.], and which would become raisable and payable (with other legacies and sums of money) by and out of the residue of the personal estate of the said [T. L.], upon the decease of the said [S. C. L.]; *And* all interest (if any) which should or might become due for the same, after the decease of the said [S. C. L.]; *To hold*, receive, and enjoy the said legacy or sum of pounds, at or upon the decease of the said [S. C. L.], and all interest to become due for the same, unto the said [X. Y.], his executors, administrators, and assigns, for his and their own absolute use and benefit; AND WHEREAS

Assignment of the legacy by X. Y. to F. H. by way of sale.

by an indenture of assignment, bearing date the day of , and made or expressed to be made between the said [X. Y.], of the one part, and [F. H.], therein described, of the other part, the said [X. Y.] did (for the considerations therein mentioned) bargain, sell, assign, transfer, and set over unto the said [F. H.], his executors, administrators, and assigns, *All that* the said legacy or sum of pounds sterling money, which was so given and bequeathed by the said will of the said [T. L.], as therein and hereinbefore is mentioned, *And* all interest which should, after the decease of the said [S. C. L.], become due for the same; *To hold*, receive, and enjoy the same legacy or sum and interest, unto the said [F. H.], his executors, administrators, and assigns, for his and their own absolute use and benefit; AND WHEREAS the said

Death of F. H. intestate, and that letters of administration were granted to his widow the borrower.

[F. H.] departed this life on or about the day of intestate; *And* on or about the day of , in the same year, letters of administration of his goods, rights, credits, and effects, were granted to his widow the said [*borrower*], by the Prerogative Court of the Archbishop of Canterbury; AND WHEREAS the said [F. H.]

That F. H. had only three children.

had only three children, namely, the said [E. H.], [L. H.], and [D. H.]; AND WHEREAS all the debts and funeral expenses of the said [F. H.] have been fully paid, and all affairs relating to the administration of his estate and effects have been adjusted and settled, as she the said [*borrower*] doth hereby testify and declare; AND WHEREAS

That all the debts of the testator have been paid, and all his affairs settled.

That on the division of the

upon the division of the personal estate and effects of the

said [F. H.], between the said [*borrower*], [E. H.], [L. H.], and [D. H.], pursuant to the statute made for the distribution of the personal estate of intestates, it was arranged and agreed, that the said legacy or sum of pounds, which was so assigned to the said [F. H.] by the said lastly hereinbefore recited indenture of assignment as aforesaid, should thenceforth belong to the said [*borrower*], as her own absolute property, and should be accepted and taken by her at the sum of pounds, as part of her share in the personal estate and effects of the said [F. H.], as they the said [*borrower*], [E. H.], [L. H.], and [D. H.] do hereby severally and respectively testify and declare; AND WHEREAS the said [S. C. L.] is now of the age of years or thereabouts; AND WHEREAS the said [*borrower*], having occasion for the sum of pounds, hath applied to the said [*lender*] to lend and advance her the same, which he the said [*lender*] hath consented and agreed to do, upon having the repayment of the same, together with interest thereon, after the rate of five pounds for one hundred pounds by the year, secured by the covenant of the said [*borrower*] hereinafter contained, and by an assignment to him the said [*lender*] in manner hereinafter mentioned, of the said legacy or sum of pounds, and interest, which were so assigned by the said lastly hereinbefore recited indenture as aforesaid; AND WHEREAS the said [E. H.], [L. H.], and [D. H.], have respectively agreed, at the request of the said [*borrower*] and [*lender*], to join in the said assignment in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*lender*], to the said [*borrower*] in hand well and truly paid, &c. (*Covenant from borrower with lender to pay him the sum of pounds and interest, at the end of six months, see post*, p. 384;) AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the sum of pounds by the said [*lender*] to the said [*borrower*] so paid as hereinbefore is mentioned, and in consideration, &c. (*nominal consider-*

ASSIGNMENT OF A LEGACY FOR SECURING A SUM OF MONEY AND INTEREST.

personal estate of the testator between the borrower and his children, it was agreed that the legacy of —*l.* should belong to the borrower as part of her share.

That the borrower having occasion for the sum of —*l.* had applied to the lender for it, on the security of her covenant, and an assignment of the legacy of —*l.*, as after-mentioned.

That the children have agreed to join in the assignment.

First witnessing part.

Covenant to repay the money lent, with interest.

Second witnessing part.

The borrower and her children assign to the lender

ASSIGNMENT OF A LEGACY FOR SECURING A SUM OF MONEY AND INTEREST.

ation to [E. H.], [L. H.], *and* [D. H.],) SHE the said [*borrower*], *Doth* by these presents grant, bargain, sell, assign, transfer, and set over, *And* the said [E. H.], [L. H.], and [D. H.], at the request of the said [*borrower*] and [*lender*], (testified by their respectively executing these presents,) *Do*, and every of them *Doth* by these presents grant, bargain, sell, assign, remise, release, and for ever quit claim, unto the said [*lender*], his executors, administrators, and assigns, ALL THAT the said legacy or sum of pounds sterling money, which was so given and bequeathed by the said will of the said [T. L.], to the said [W. T.] as aforesaid, and which was assigned to the said [F. H.], by the said recited indenture of the day of , as hereinbefore is mentioned; *And* all interest which after the decease of the said [S. C. L.] shall become due for or on account of the same; *And* all monies, benefits, and advantages, to be had or obtained thereby or in respect thereof; *And* all the right, title, interest, claim, and demand whatsoever, both at law and in equity, of them the said [*borrower*], [E. H.], [L. H.], and [D. H.], and every of them, in, to, out of, or upon the same legacy or sum and interest and premises, and every or any part thereof; TO HAVE, HOLD, RECEIVE, AND TAKE the said legacy or sum of pounds, interest, and all and singular other the premises hereby assigned, or intended so to be, unto the said [*lender*], his executors, administrators, and assigns absolutely; *But* nevertheless, upon the trusts hereinafter declared concerning the same, (that is to say;) (*If the said sum of pounds and interest are paid according to the covenant, Upon trust to assign the said legacy, &c. to the borrower, &c. as ante*, p. 327, 355); *But* if the said sum of pounds and interest hereby secured, or any part thereof respectively, shall not be paid on or at the day or time hereinbefore in that behalf mentioned, *And* the said [*lender*], his executors, administrators, or assigns, shall at any time thereafter, by any writing under his or their hand or hands, to be given to the said [*borrower*], her executors, administrators, or assigns, or left at her or their usual or last known place of abode, call in and require payment of the same, or of so much thereof as shall then remain due, and

the said legacy and all interest.

Habendum to the lender, upon the trusts after-mentioned, *viz.*

If the money is paid, to reassign; but if otherwise, to sell and apply the proceeds in payment thereof.

ASSIGNMENT OF A LEGACY FOR SECURING A SUM OF MONEY AND INTEREST.

the same shall not be paid within six calendar months next after the same shall be so called in and be required to be paid as aforesaid, *Then* and in such case, *Upon trust* that he the said [*lender*], his executors, administrators, or assigns, do and shall, at his or their discretion, absolutely sell and dispose of the said legacy or sum of pounds, interest, and premises hereby assigned, or intended so to be, either by public auction or private contract, as he or they shall think fit, and for such price or prices as to him or them shall seem meet, with full liberty for him or them to buy in the same at any auction, and to resell the same at some future auction or by private contract, as to him or them shall seem most advisable, without being answerable for any loss that may arise by reason of such resale; *And* for the purpose of effectuating such sale as aforesaid, do and shall enter into, &c. (*as ante*, p. 333); AND IT IS HEREBY AGREED AND DECLARED, &c. (*Declaration that sales by the lender, shall bind the borrower, see ante*, p. 332;) AND IT IS HEREBY AGREED AND DECLARED, that the receipt or receipts in writing of the said [*lender*], his executors, administrators, or assigns, for the monies which shall arise from any such sale or sales as aforesaid, or for the said legacy or sum hereby assigned, or intended so to be, or any part thereof, in case the same shall by the decease of the said [T. C. L.], become payable during the continuance of this security, shall discharge the person or persons paying the same, from being answerable for the misapplication or nonapplication of the monies in such receipt or receipts acknowledged to have been received, or from being obliged to see to the application thereof; *And* that no person or persons to or with whom any sale or sales shall be made by virtue of these presents, or who shall be liable to pay the said legacy or sum hereby assigned, or intended so to be, shall be obliged to ascertain or enquire whether at the time of such sale or payment, the principal monies and interest hereby secured, or any part thereof, were or was due and unpaid, or (in the case of a sale,) to enquire whether the same monies had or had not been previously called in, in manner before mentioned, or otherwise to enquire into the necessity or propriety of the said sale; AND IT IS

Declaration that the receipts of the lender shall be sufficient discharges for the monies to arise from such sale, or for the said legacy;

and that no person, when any sale shall be made by virtue of these presents, shall be obliged to enquire as to the necessity or propriety of it.

ASSIGNMENT OF A LEGACY FOR SECURING A SUM OF MONEY AND INTEREST.

HEREBY FURTHER AGREED AND DECLARED, between and by the said parties hereto, that in case the said legacy or sum of pounds, interest, and premises hereby assigned, or intended so to be, shall be sold, under or by virtue of the power or authority hereinbefore for that purpose contained, or shall be paid in by the person or persons liable to pay the same, the said [*lender*], his heirs, executors, administrators, or assigns, shall, with and out of the monies which shall arise from such sale or shall be so paid in as aforesaid, in the first place pay, retain, and satisfy, all the costs, charges, and expenses, which he or they shall have incurred or sustained in or about the said sale, or the receipt of the said legacy, or in or about any matter or thing in anywise relating thereto; *And* in the next place, retain or pay the said sum of pounds and interest hereby secured, or so much thereof respectively as shall then remain unpaid; *And* shall pay the surplus or residue of the said monies, (if any,) unto the said [*borrower*], her executors, administrators, or assigns, for her and their own absolute use and benefit, and as her or their own exclusive property, monies, and effects; AND the said [*borrower*] doth hereby for herself, her heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lender*], his executors, administrators, and assigns, in manner following, (that is to say;) that she the said [*borrower*], is at the time of the sealing and delivery of these presents, well entitled to the said legacy or sum of pounds and premises hereby assigned, or intended so to be, free from any incumbrances whatsoever; *And* that the personal estate and effects of the said [T. L.], is more than sufficient to discharge the debts, and funeral and testamentary expenses of the said [T. L.] which now remain unpaid, (if any,) and all the legacies given and bequeathed by his said will; *And* that she the said [*borrower*], now hath in herself good right, full power, and lawful and absolute authority to assign, transfer, and assure, the said legacy or sum of pounds, and premises hereby assigned, or intended so to be, unto the said [*lender*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And* that she the said

Declaration, that in case the legacy shall be sold or paid in, the lender shall, out of the monies to arise thereby, in the first place, pay the expenses incurred by such sale or receipt of the legacy;

in the next place retain the said sum of —*l.* and interest hereby secured, and pay the surplus (if any) to the borrower.

Covenants for title from the borrower.

That the personal estate of T. L. is more than sufficient to discharge his debts, funeral expenses, and legacies now unpaid;

that the borrower hath good right to assign;

that he will not do any act

ASSIGNMENT OF A LEGACY FOR SECURING A SUM OF MONEY AND INTEREST.

[*borrower*], her executors or administrators, shall not nor will at any time hereafter, make, do, or execute, or permit or suffer to be made, done, or executed, any act, deed, matter, or thing whatsoever, whereby or by means whereof, the said [*lender*], his executors, administrators, or assigns, shall or may be prevented or hindered from receiving, recovering, or taking the said legacy or sum of pounds and premises hereby assigned, or intended so to be, or any part thereof, in manner aforesaid, according to the true intent and meaning of these presents; *And further*, that she the said [*borrower*], her executors and administrators, and all persons whomsoever, having or claiming any right, title, or interest in, to, or out of the said legacy or sum of pounds and premises hereby assigned, or intended so to be, or any part thereof, shall and will at any time or times hereafter, upon every reasonable request of the said [*lender*], his executors, administrators, or assigns, but at the expense of the said [*borrower*], her executors, administrators, or assigns, make, do, and execute, all and every such further and other lawful and reasonable assignments, acts, deeds, matters, and things whatsoever, for the better and more effectually assigning and assuring the same legacy or sum of pounds and premises unto the said [*lender*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*lender*], his executors, administrators, or assigns, or his or their or any of their counsel in the law, shall be reasonably devised, or advised and required. IN WITNESS, &c.

whereby lender may be prevented from receiving the legacy;

and for further assurance.

ACCOMPANYING A TRANSFER OF CANAL SHARES, BY WAY OF SECURITY.

DEED, *or* DECLARATION *of* TRUST, *accompanying a Transfer of* CANAL SHARES, *made for Securing a Debt already owing, and future Advances, not exceeding in the whole the Sum of Pounds, with Interest* (*a*).

Parties.

THIS INDENTURE, made the day of 18 , BETWEEN [*transferror*] of, &c. of the first part; [*lender*] of, &c. of the second part; and [*trustee*] of, &c. of the third part; WHEREAS the said [*transferror*] is indebted to the said [*lender*] in the sum of pounds, and thinking it probable that he may have occasion to raise a sum or sums of money to discharge certain promissory notes of his, which are now nearly due, hath proposed to borrow the same of the said [*lender*], and the said [*lender*] hath agreed to advance and pay to the said [*transferror*] such sum or sums, as and when the same shall be required, so that the same do not in the whole exceed the sum of pounds; *And* for securing the payment of the said debt or sum of

Recites that the transferror is indebted to the lender in the sum of —*l.*, and hath proposed to borrow of him a further sum or sums;

Practical observation.

(*a*) In most cases, shares in canal companies are, by the acts incorporating the companies, made personal estate, and transferable by a prescribed form, and required to be registered in the office of the company. It very rarely happens, that the form of transfer is adapted to a mortgage, or to any case except a mere absolute sale; and it is, therefore, usual, when a share in a canal company is made a security, simply to transfer the share to the transferree, and to declare the trusts in a separate deed. The above precedent will be found useful in all cases in which it is expedient to transfer the property intended as a security, by a separate instrument from the one in which the trusts or mortgage provisoes are declared or contained. In preparing a mortgage, or trust deed of security of the above nature, some of the observations in the notes to the precedent of a mortgage of stock (see title MORTGAGES,) may be found useful.

ACCOMPANYING A TRANSFER OF CANAL SHARES, BY WAY OF SECURITY

pounds, in which the said [*transferror*] is so indebted to the said [*lender*] as hereinbefore is mentioned, and the repayment of such sum or sums as the said [*lender*] may advance and pay to the said [*transferror*] as aforesaid, together with interest for the same respectively, after the rate of five pounds for one hundred pounds by the year, to be computed as hereinafter is mentioned, it hath been agreed, that the said [*transferror*] should transfer unto the said [*trustee*], eight shares in the Dudley Canal Navigation, numbered respectively , , , , , , , and , and now standing in the name of him the said [*transferror*] in the books of the said Navigation, and which now belong to him as the absolute owner and proprietor thereof; *And* that the said parties hereto should join in the declarations, and enter into the covenants hereinafter contained; AND WHEREAS in pursuance and part performance of the said agreement, by a deed of bargain and sale or transfer, bearing even date with these presents, and intended, immediately after the execution hereof, to be registered with the clerk of the said navigation, the said [*transferror*] hath bargained, sold, and transferred unto the said [*trustee*], his executors, administrators, and assigns, all those the said several eight shares in the said Dudley Canal Navigation hereinbefore particularly mentioned or referred to, *And* all the right, title, and interest of the said [*transferror*] therein or thereto, *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns absolutely; *But* subject to the same rules and orders, and on the same conditions, as the said [*transferror*] held the same immediately before the said transfer (*b*): NOW THIS INDEN-

that it has been agreed that for securing the debt and further advances, with interest, the transferror should assign to a trustee certain shares in the Dudley canal navigation,

and that the parties should join in the declarations, &c. after contained;

and that by a deed of even date, the shares have been transferred accordingly.

First witnessing part.

(*b*) When the trust deed is for securing a sum of money lent at the time of the transfer, the recitals may be as follows;

"WHEREAS the said [*transferror*], having occasion for the sum of pounds, hath applied to the [*lender*] to advance him the same, which he the said [*lender*] hath consented and agreed to do, on having the repayment thereof, with interest for the same after the rate of five pounds for one hundred pounds by the year, secured, on or

Recitals where the money is lent at the time of the transfer.

ACCOMPANYING A TRANSFER OF CANAL SHARES, BY WAY OF SECURITY.

TURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the premises, *It is hereby agreed and declared* between and by the said parties hereto, that the said [*trustee*], his executors, administrators, or assigns, shall and will stand and be possessed of and interested in the said several shares in the said Dudley Canal Navigation, which have been so assigned and transferred to him and them as hereinbefore is recited, *Upon the trusts*, and with and subject to the powers and provisoes hereinafter expressed and contained concerning the same, (that is to say;) *Upon trust*, if the said [*transferror*], his executors, administrators, or assigns, shall and do, on the day of , which will be in the year 18 , well and truly pay or cause to be paid unto the said [*lender*], his executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain and Ireland, in satisfaction of the like sum which is so due and owing to the said [*lender*] as aforesaid, *And*

Declaration that the trustee shall stand possessed of the shares upon the trusts following, *viz.*

If the debt and future advances are paid with interest on the — day of ——, then to reassign;

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at the day or time hereinafter expressed by the covenant of the said [*transferror*] hereinafter contained, and by an assignment to the said [*trustee*], his executors, administrators, and assigns, upon the trusts, and in manner hereinafter mentioned, of four several shares in the Canal Navigation, numbered respectively , , , and , and now standing in the name of him the said [*transferror*] in the books of or relating to the said Navigation; AND WHEREAS in pursuance and part performance of the said agreement, the said [*lender*] hath this day advanced and paid to the said [*transferror*] the sum of pounds of lawful money of Great Britain and Ireland, as he the said [*transferror*] doth hereby admit and acknowledge; AND WHEREAS in pursuance and further performance of the said agreement, the said [*transferror*] hath, by a deed poll under his hand and seal, bearing even date with these presents, and made in the form and mode prescribed by a certain act of parliament passed in the year of his Majesty King George the Third, entituled "

," assigned and transferred unto the said [*trustee*], his executors, administrators, and as-

ACCOMPANYING A TRANSFER OF CANAL SHARES, BY WAY OF SECURITY.

also all such sum or sums of money as the said [*lender*] shall or may at any time hereafter, before the said day of , advance or pay to or for the said [*transferror*], not exceeding in the whole the sum of pounds (*c*), together with interest for the same respectively, after the rate of five pounds for one hundred pounds, to be computed as hereinafter is mentioned, (that is to say;) as to the said sum of pounds, from the day of the date of these presents, *And* as to such other sum or sums as aforesaid, from the day or respective days of advancing and paying the same; *And* shall and do make such payments without any deduction, &c. (*as ante*, p. 353); that he the said [*trustee*], his executors, &c. (*shall re-assign, &c. as ante*, p. 346); *But* if default shall be made in payment of the said principal monies and interest, or any of them, or any part thereof, on or at the day or time hereinbefore mentioned, *Then* and, &c. (*upon trust to sell*

but otherwise to sell.

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signs, the said several shares in the Canal Navigation, which are so standing in the name of him the said [*transferror*] in the books of the said Canal Navigation as aforesaid, *And* it is intended that the said assignment or transfer should be forthwith registered at the office of the proprietors of the said Canal Navigation, as directed or required by the said act of parliament."

(*c*) Where the debt and future advances are to remain on the security for two or three years, the payment of the interest may be expressed as follows;

As to payment of interest.

"*And* shall and do, on the day of now next ensuing, and on the day of , and the day of , in each of the years 18 , 18 , and 18 , well and truly pay or cause to be paid, interest for the same sums respectively, after the rate of five pounds for one hundred pounds by the year, to be computed, as to the said sum of pounds, from the day of the date hereof, and as to such other sum or sums as aforesaid, from the time or respective times at which the same shall have been advanced or paid, or so much of such interest respectively as shall for the time being remain and be unpaid; *And* shall and do, &c." (*as above*).

ACCOMPANYING A TRANSFER OF CANAL SHARES, BY WAY OF SECURITY.

&c. (*d*), *with declarations that sales by the trustee shall bind the borrower; that the trustee's receipts shall be sufficient discharges; and that the trustee shall, out of the produce of the sale, pay* the said principal monies and interest hereby secured, or so much thereof respectively as shall then remain unpaid, *and pay the surplus to transferror, &c. see ante,* p. 325, 333, 342); AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, &c. (*that until the shares are re-assigned or sold* (*e*),

Declaration that until the shares are re-assigned or

(*d*) The following short form of a trust for sale will often be found useful:.

"*Upon trust*, by public auction or private contract, to make sale and absolutely dispose of, either together or in parcels, all and singular the said messuages, &c. and their appurtenances, and the inheritance thereof in fee simple, for the best price or prices in money that can be obtained for the same; *And* for that purpose to make and execute all such conveyances and assurances of the same hereditaments and premises, or any of them, as shall be thought expedient or proper; *And* generally to do and perform all acts, deeds, and things which may be judged necessary for perfecting and completing such sale and disposition, or otherwise, for carrying the same into effect."

(*e*) Sometimes, and more properly, this provision is expressed as follows;—the form is taken from a trust deed conveying a freehold estate:

"AND IT IS HEREBY, &c. that until default shall be made in payment of the said principal monies and interest hereby secured as aforesaid, or some of them, or some part thereof, on or at the days or times hereinbefore in that behalf mentioned, the said [*trustees*], their heirs or assigns, do and shall permit and suffer the said messuages, &c. hereby granted, &c. and their appurtenances, to be held, occupied, and enjoyed, or the rents, issues, and profits thereof, to be received and taken by the said [*owner*], his heirs or assigns, for his or their own use and benefit; *But* that in case of, and immediately after, any such default as aforesaid, they the said [*trustees*], their heirs or assigns, do and shall enter

ACCOMPANYING A TRANSFER OF CANAL SHARES, BY WAY OF SECURITY.

the trustee shall receive the dividend or dividends which shall become payable for or on account of the same, and thereout *discharge expenses and keep down the interest on the monies secured, and pay the surplus to the* [*transferror*], *as ante*, p. 334, 356 ;) (*Usual clauses for changing trustees, and for their indemnity ;*) AND the said [*transferror*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustee*], his executors, administrators, and assigns, that at the time of making the assignment and transfer hereinbefore mentioned, he the said [*transferror*] was absolutely possessed of or entitled to, for his own use and benefit, the said several shares of and in the said Dudley Canal Navigation, which have been so assigned and transferred as aforesaid, *And* had good right, full power, and lawful authority to assign and transfer the same shares, and every of them, unto the said [*trustee*], his executors, administrators, and assigns, in manner aforesaid; *And* that the orders, rules, and conditions to be obeyed, observed, and complied with by the owner or proprietor of the same shares, have been duly obeyed, observed, and complied with, up to the day of the date hereof; *And* that he the said [*transferror*] hath not at any time or times heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing, whereby or by reason or means whereof the said shares of and in the said Dudley Canal Navigation which have been so assigned and transferred to the said [*trustee*], his executors, administrators, and assigns, as aforesaid, or any of them, are, is, can, shall, or may be in anywise charged, incumbered, forfeited, or prejudicially affected; *And further*, that he the said [*transferror*], his executors or administrators, and all, &c. (*for further assurance*); AND the said [*trustee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*transferror*], his executors, adminis-

sold, the trustee shall receive the dividends on the shares, and keep down the interest, and pay the residue to transferror.

Covenants for the title.

Covenant from the trustee not to proceed to a

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into and upon, or receive and take the rents, issues, and profits of the same messuages, &c. and their appurtenances; *And* do and shall, with and out of the same rents, issues, and profits, pay," &c. (*see* p. 334, 356.)

ACCOMPANYING A TRANSFER OF CANAL SHARES, BY WAY OF SECURITY.

trators, and assigns, that he the said [*trustee*], his executors or administrators, shall not nor will, under or by virtue of the trusts hereinbefore declared, proceed to a sale of the said shares in the Dudley Canal Navigation, which have been so assigned and transferred to him and them as aforesaid, without giving two calendar months' previous notice in writing of his or their intention so to do to the said [*transferror*], his executors, administrators, or assigns, or leaving such notice at his or their usual or last known place or places of abode or dwelling: AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, HE the said [*transferror*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lender*], his executors, administrators, and assigns, that he the said [*transferror*], his heirs, executors, or administrators, shall and will, on the said day of , which will be in the year 18 , well and truly pay, &c. (*as ante*, p. 380, 381) (*f*); PROVIDED ALWAYS, and it is hereby expressly agreed and declared, that the total amount of the principal monies secured by, and to be ultimately recoverable by virtue of these presents, shall not, (including the aforesaid debt or sum of pounds,) exceed the sum of pounds. IN WITNESS, &c.

sale without giving two months notice to the borrower.

Second witnessing part.

The borrower covenants to pay the money and interest secured.

Proviso that the total amount of the money secured shall not exceed ——*l.*

(*f*) Where the principal and interest are made payable at the end of six months, say—

"or cause to be paid unto the said [*lender*], his executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain and Ireland, together with interest for the same after the rate of five pounds for one hundred pounds by the year, to be computed from the day of the date of these presents, without any deduction or abatement," &c.

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

DECLARATION *of* TRUST *of a Sum of Money bequeathed by the Will of* JAMES DICK, ESQ., *in favor of the* POOR *of* FORRES, *in Scotland; to be executed by the* TRUSTEES *prior to the Payment to them of the Trust Money, pursuant to a* DECREE *of the* COURT *of* CHANCERY: *such Declaration of Trust being first* APPROVED *by a* MASTER *in* CHANCERY (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME; The Reverend Duncan Grant, of Forres, in the county of , minister; and Charles Gordon, of the same place, esquire, send greeting: WHEREAS James Dick, late

Recites the will of James Dick, Esq.

(*a*) It very frequently happens, that it is necessary to apply to the Court of Chancery for payment of a legacy in favor of a charity, either because the estate out of which the legacy is payable is in Chancery for the purposes of administration, or because it is requisite, from a misdescription, or doubtful description, of the charity, or the non-appointment of trustees, or the refusal of the trustees to act, to apply to the Court of Chancery to sanction the payment of the legacy to the charity claiming it, and most nearly answering the description in the will, or to appoint proper persons to be trustees of the charitable bequest; and in these cases, it is usual for the Court to refer the matter in question to the master, and then, after the charitable institution intended to be benefited has been ascertained, or the master has approved of proper persons to be trustees of the bequest, to direct the payment of the legacy to the trustees, on their executing a proper declaration of trust of it, to be settled and appoved by the master. In many cases it is proper for executors to get the trustees of a charity to execute a declaration of trust of the money or stock bequeathed for a permanent object, although it may not be necessary to apply to a court of equity. Sometimes the amount of the sum bequeathed is not sufficiently large to admit of an application to equity to determine any doubt, or to appoint trustees; and, therefore, in these instances, the executors should require, in the declaration of trust, a covenant of indemnity from some responsible person interested in the charity.

The Court of Chancery, on directing payment of a legacy to a charity, usually requires the trustees to execute a declaration of trust, to be settled by the master.

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

of Finsbury Square, in the city of London, esq., deceased, duly made and published his last will and testament in writing, bearing date on or about the eighteenth day of May, one thousand eight hundred and twenty-seven, and thereby gave, devised, and bequeathed, all his money, securities for money, stock in the public funds, goods, chattels, and other his personal estate whatsoever and wheresoever, not thereinafter specifically disposed of, unto John Dick, esq., a captain in the Royal Navy, John Mackie, of Fenchurch Street, in the said city of London, merchant, and James Alexander Simpson, of Doughty Street, Mecklenburgh Square, in the county of Middlesex, solicitor, (whom he thereby nominated and appointed his executors,) their executors, administrators, and assigns, upon trust, with all convenient speed after his decease, to call in and convert into money, such part of his said estate as should not consist of money, or of stock in the public funds of England, and to stand possessed of the money to be produced thereby, and of his said other money, upon trust in the first place, to pay his just debts and funeral and testamentary expenses, and the pecuniary legacies and annuity thereafter given and bequeathed; *And* subject thereto, to pay, assign, and make over the same, to the Principals and Professors for the time being of the King's and Mareschal's colleges in Aberdeen, to be held and applied by them, upon the trusts in the said will declared concerning the same, for the benefit of the country parochial schoolmasters as by law established in the three counties of Aberdeen, Banff, and Moray, excluding the royal burghs; *And* the said testator did by his said will give and bequeath to and for the benefit of the several persons therein named, the several pecuniary and other legacies therein mentioned, and did thereby, (amongst other things,) direct his executors to pay to the minister and oldest baillie of the said town of Forres, the sum of one thousand pounds sterling, to be placed out at interest on heritable security in Scotland, in the joint names of the minister and oldest baillie of the said town for the time being, with power to such minister and baillie to alter the security from time to time, as they should judge best; *And* the said testator did by his said will desire, that the interest arising from the said legacy

whereby he gave 1000*l.* to the minister and oldest baillie of Forres, for the benefit of the poor of Forres;

or sum of one thousand pounds, should be laid out in each year in the purchase of coals, when to be had on the best terms, and that such coals should be distributed in each winter, to and among the indigent poor of the said town of Forres, at the discretion and by the direction of the minister of the said town of Forres for the time being; and if at any time it should happen that there should be no minister, then at the discretion and by the direction of the oldest baillie of the said town of Forres for the time being until a minister should be appointed; *And* the said testator did by his said will direct, that the legacy duty which would be payable for the said legacy or sum of one thousand pounds, should be discharged out of his residuary personal estate and effects: AND WHEREAS the said James Dick duly made and published a codicil to his said will, which codicil bears date on or about the twentieth day of November, one thousand eight hundred and twenty-seven, and thereby altered the residuary gift and bequest in his said will contained in favor of the school-masters of the said counties of Aberdeen, Banff, and Moray, to the extent, and in manner in his said codicil mentioned (*b*), and in all other respects ratified and confirmed his said will: AND

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

a codicil thereto;

the death of James Dick.

(*b*) By the codicil, the testator revoked the bequest of the residue of his estate to the principals and professors of the King's and Mareschall's Colleges in Aberdeen, and directed, that in case he made no disposition of such residue in his life-time, his executors should make over such residue to such individuals or corporate body as they should think fit to nominate as trustees for the schoolmasters. The executors declining to execute this trust, a suit was instituted by the schoolmasters against the executors, praying an account of the estate of the testator, and that the clear residue, after payment of the debts and legacies, might be paid to such persons as the court should think proper to nominate as trustees for the charity. A reference was made in the usual manner to the master, to take an account of the testator's estate, ascertain the residue, and approve of proper persons as trustees for the charity. The master by his report certified, that he had taken an account of the testator's estate; that all the debts were paid; that there was a sum of 36,000*l.* new four per cents. standing in the name of the accountant-general, in trust in the cause, which would be wanted for the stock legacies bequeathed by the will; that there was standing

Statement of the codicil of James Dick, Esq.

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

WHEREAS the said James Dick departed this life on or about the twenty-fourth day of May, one thousand eight hundred and twenty-eight, without having altered or revoked his said will, except so far as the same was altered or revoked by his said codicil, and without having altered or revoked his said codicil; *And* on or about the sixth day of June, one thousand eight hundred and twenty-eight, the said will and codicil were duly proved by the said John Dick, John Mackie, and James Alexander Simpson, in the Prerogative Court of the Archbishop of Canterbury; AND WHEREAS, by a decree of his Majesty's high court of Chancery, bearing date the eleventh day of February, one thousand eight hundred and twenty-nine, and made in a cause wherein his majesty's attorney-general, at the relation of William Rainy, clerk, parochial school-master of Dumblade, in the said county of Aberdeen, and Peter Merson, clerk, parochial school-master of Elgin, in the said county of Moray, on behalf of themselves and all other the parochial school-masters as by law established in the said counties of Aberdeen, Banff, and Moray, excluding the royal burghs; *And* the said William Rainy and Peter Merson, on behalf of themselves and all other the paro-

probate of the will and codicil;

Of a decree of the Court of Chancery in a suit instituted by the residuary legatees in trust.

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in the name of the accountant-general, in trust in the cause, divers other sums of stock, amounting to 150,000*l.* and upwards, and that some part of the testator's estate was still outstanding; and that it had been proposed by the schoolmasters, that eleven persons should be nominated as trustees for the charity, and that provision should be made for supplying every vacancy that should happen from death or incapacity to act; and that the keeper and deputy keeper for the time being of the signet in Scotland, and the treasurer for the time being of the society of writers to the signet, should be three of the trustees; and that the remaining eight trustees should be commissioners of the signet, chosen by and from among the commissioners of the signet, at a meeting of such commissioners, to be convened for that purpose in the usual way; and that the eight commissioners named in the report had been duly chosen by the commissioners of the signet to be the first trustees of the fund, jointly with the then present keeper and deputy keeper of the signet, and the then present treasurer of the society of writers to the signet; and that he the master approved of such proposal. A decree was then made for getting in the testator's outstand-

chial school-masters as by law established in the said counties of Aberdeen, Banff, and Moray, excluding the royal burghs, were informant and relators, and the said John Dick, John Mackie, and James Alexander Simpson, were defendants; It was ordered and decreed, that it should be referred to the master in rotation, to take an account of the personal estate of the said James Dick, not specifically bequeathed, come to the hands of the said defendants or any or either of them, or any person or persons by their or any or either of their order, or for their or any of their use; and that the said master should take an account of the said testator's funeral and testamentary expenses and debts, and of the legacies given by his said will; and that the said defendants should proceed to get in the outstanding personal estate of the said testator; and that the same, when so received, should be paid by them into the bank of England, with the privity of the accountant general of the said court of Chancery, to the credit of the said cause; *And* it was ordered, that the personal estate of the said testator should be applied in payment of the funeral and testamentary expenses and debts of the said testator in a due course of administra-

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

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ing estate, and for the appropriation of the new four per cents. in manner therein mentioned, for the payment of the stock legacies given by the will, and for the appointment of the persons before mentioned to be the present trustees of the residuary estate, and for the master to approve of a proper declaration of trust to be executed by such trustees, and for the transfer to those trustees, on the execution of such declaration of trust, of the several trust funds then standing in the name of the accountant-general, in trust in the cause, except the new four per cents.

The declaration of trust, to be executed by the trustees of the charity, and approved by the master, recited the above facts; and the master's report, certifying that he had approved of the deed as a proper declaration of trust to be executed by the trustees, and was as follows:

"Now know ye, and these presents witness, that the said [*trustees*] do hereby respectively consent and agree to become trustees of the said residuary estate of the said James Dick the testator; *And* declare, that they the said

Declaration that the trustees will stand possessed of the funds which shall be trans-

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

tion, and then in payment of the pecuniary legacies given by his said will and then payable, and the arrears of the annuities given and bequeathed by his said will, and the residue of the said estate and effects should be applied in the manner in the said decree mentioned; AND WHEREAS the Honorable Robert Henley Eden, (the master to whom the said cause stood referred,) made his report in the said cause, bearing date the twenty-fourth day of March now last past, and thereby certified, that he had proceeded upon the reference so made to him by the said decree as aforesaid, and that he found, that the said defendants had received on account of the said personal estate of the said testator, the several sums mentioned in the first schedule to his said report annexed; *And* that they had thereout expended in discharge of the said testator's funeral and testamentary expenses, and in payment of his debts and of some of the legacies given by his will, the several sums mentioned in the second schedule to his said report annexed; and that he found, that all the pecuniary legacies given by the said will of the said testator, had been paid, except the said legacy or sum of one thousand pounds which was bequeathed to the minister and oldest baillie of the said town of Forres, for the benefit of the poor of

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ferred to them upon the trusts of Mr. Dick's will, and apply the same accordingly.

[*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, shall and will stand and be possessed of, and interested in the said sum of pounds, three per cent. reduced bank annuities, &c. &c. (*stating the different trust funds*) which are so respectively directed to be transferred and paid to the said [*trustees*] by the said lastly hereinbefore recited decree and master's report as aforesaid, and the interest, dividends, and annual produce of the same respectively, and also of and in all other the monies, stocks, funds, and securities which shall or may at any time hereafter become payable or transferrable to the said parties hereto, or any of them, on account, and as part of the residuary estate of the said James Dick the testator, and the interest, dividends, and annual produce thereof respectively, upon and for the trusts, intents, and purposes ex-

that town, as in the said report and hereinbefore is mentioned; and that the interest which had accrued in respect of the said legacy or sum of one thousand pounds, on the said twenty-fourth day of March then last, amounted to the sum of thirty-three pounds six shillings and eight pence, which added to the said legacy or sum of one thousand pounds, made up the sum of one thousand and thirty-three pounds six shillings and eight pence: AND WHEREAS by a decree of the said court of Chancery, bearing date the twenty-second day of May, one thousand eight hundred and thirty, and made in the said cause, it was (amongst divers other things,) ordered, that so much of a sum of forty-nine thousand six hundred and fifty-seven pounds four shillings and eight pence, three pounds per cent. consolidated bank annuities, standing in the books of the governor and company of the Bank of England, in the name of the said accountant-general of the said court of Chancery, in trust in the said cause, as in the said decree is mentioned, as would be sufficient to raise the sum of one thousand and thirty-three pounds six shillings and eight pence, found due by the said master's report, to the said Duncan Grant and Charles Gordon, as such Minister

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

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pressed and declared concerning the same, in and by the said will and codicil of the said James Dick as aforesaid, and shall and will hold or pay and apply the same accordingly: PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed, that while any of the trust funds, subject to the trusts of these presents, shall remain or be invested in any of the parliamentary stocks or public funds of Great Britain, transferrable at the Bank of England, the part or parts which shall remain or be so invested, shall stand in the names of such four of the trustees for the time being of these presents as the major part of the trustees for the time being of these presents shall from time to time nominate and appoint for that purpose, so as none of such four trustees be either the keeper or deputy keeper for the time being of the signet, or the treasurer for the time being of the said society of writers to the signet; *And* that while any of the same trust funds shall be in-

Proviso that while they shall be invested in the annuities transferrable at the bank of England, they shall stand in the names of four of the trustees, to be appointed by the rest.

and that while the funds shall

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

and Baillie as aforesaid, should be sold with the privity of the said accountant-general, and one of the cashiers of the Bank was to have notice to attend and receive the money to arise by such sale, who, upon the receipt thereof, was to pay the same into the Bank, with the privity of the said accountant-general, to be placed to the credit of the said cause; *And* by the said decree now in recital, it was ordered, that it should be referred to the said master to approve of and settle a proper deed of declaration of trust to be executed by the said Duncan Grant and Charles Gordon, with a provision for the appointment and change of trustees from time to time, and that the said sum of one thousand and thirty-three pounds six shillings and eight pence, so directed to be raised and paid into the Bank as thereinbefore mentioned, should be paid to the said Duncan Grant and Charles Gordon, upon the execution by them of the said declaration of trust, such execution to be certified by the said master: AND WHEREAS the said master made his report in the said cause bearing date on or about the day of this present month of , and thereby certified, (amongst other things,) that he had approved of and settled a proper deed of declaration of trust, to be ex-

The master's report, approving of the deed to be executed by the trustees.

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be laid out in real or heritable security, they shall stand in the names of all the trustees, except the keeper, deputy keeper, and treasurer.

vested on mortgage or real security in England, or heritable security in Scotland, or in or on any other security or securities, except the parliamentary stocks or public funds which are transferrable at the Bank of England, the part or parts of the said trust funds which shall be so invested as last aforesaid, shall be invested in the names of all the trustees for the time being of these presents, except the keeper and deputy keeper for the time being of the signet, and the treasurer for the time being of the said society of writers to the signet: PROVIDED ALWAYS, and it is hereby further declared, that when any of them the said [*the three first named trustees, being the keeper, deputy keeper, and treasurer*], or any other person who shall hereafter be appointed keeper or deputy keeper of the signet, or treasurer of the society of writers to the signet, shall, in any manner, cease to be keeper or deputy keeper of the signet, or treasurer of the society of writers to the signet,

Proviso for making the keeper and deputy keeper of the signet, and the treasurer of the society of writers to the signet, trustees of these presents immediately on their

ecuted by the said Duncan Grant and Charles Gordon, in pursuance of the said lastly hereinbefore recited decree, and that in testimony of his approbation of the same, he had written his initials in the margin of the first two skins of the said deed, and his name or allowance or approval, in the margin of the third and last skin thereof (meaning by such deed of declaration of trust, these presents): NOW KNOW YE, and these presents witness, that the said Duncan Grant and Charles Gordon do hereby respectively declare and agree, that they the said Duncan Grant and Charles Gordon, shall and will, with all convenient speed, after the said sum of one thousand and thirty-three pounds six shillings and eight pence, by the said lastly hereinbefore recited decree directed to be paid to them the said Duncan Grant and Charles Gordon as aforesaid, shall be so paid, lay out and invest the said sum of thirty-three pounds six shillings and eight pence, part thereof, in the purchase of coals, to be applied for the benefit of the poor of the said town of Forres during the ensuing winter, in such manner as in the said will of the said James Dick is mentioned, with respect to the coals to be purchased with the interest of the said legacy or sum of one thousand pounds, thereby given and bequeathed as here-

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

Declaration that the trustees will, as soon as they receive the trust monies, lay out the sum of —— pounds in coals for the poor, during the ensuing winter, and lay out the residue on heritable security in the names of the trustees and two additional persons, and cause such two persons to join in a declaration of trust of the money so invested.

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the person so for the time being ceasing to be keeper or deputy keeper of the signet, or treasurer of the society of writers to the signet, shall immediately thereupon cease to be a trustee of these presents; and the person who shall be appointed keeper or deputy keeper of the signet, or treasurer of the society of writers to the signet, in the place or stead of the person so for the time being ceasing to be keeper or deputy keeper of the signet, or treasurer of the society of writers to the signet, shall, immediately after his appointment, be and become a trustee of these presents, and have the same powers and authorities in every respect as the person in whose place he shall have become such trustee: PROVIDED ALWAYS, and it is hereby further declared, that if any of them the said [*the eight last named trustees, (being commissioners of the signet,)*] or any other person who shall hereafter be appointed trustee of these presents in any of their places or stead, as

appointment to the above offices.

Provision for changing the trustees, not being keeper, deputy keeper, or treasurer.

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

inbefore is mentioned, and lay out and invest the sum of one thousand pounds, the residue of the said sum of one thousand and thirty-three pounds six shillings and eight pence, in the joint names of them the said Duncan Grant and Charles Gordon, and [A. B.], of, &c. and [C. D.], of, &c. upon heritable security in Scotland, and shall and will by a deed or declaration of trust, to be endorsed on these presents, cause and procure the said [A. B.] and [C. D.] to join with them the said Duncan Grant and Charles Gordon in a declaration and agreement that they the said Duncan Grant, Charles Gordon, [A. B.], and [C. D.], and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor, shall and will stand and be possessed of and interested in the said sum of one thousand pounds and securities, so to be vested in them the said Duncan Grant, Charles Gordon, [A. B.], and [C. D.] as aforesaid, and the interest and annual produce thereof respectively, upon the trusts, and with and subject to the powers, provisoes, and agreements hereinafter declared and contained, or referred to, of and concerning the same, (that is to say); *Upon trust*

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hereinafter is mentioned, shall cease to be a commissioner of the signet, *Then* and in every such case, the person who shall so cease to be a commissioner of the signet as aforesaid, shall thenceforth cease to be a trustee of these presents: PROVIDED ALWAYS, and it is hereby further declared, that when and so often as the number of trustees for the time being of these presents, not being either keeper or deputy keeper for the time being of the signet, or treasurer for the time being of the society of writers to the signet, shall, from the cause aforesaid, or from death, or unwillingness or incapacity to act, be less than eight, the vacancy in the number of such trustees shall be supplied by the appointment of such other person or persons, being a commissioner or commissioners of the signet, as shall be chosen or nominated in that behalf by the commissioners of the signet, at a meeting of such commissioners, to be convened in the manner in which the meeting of such commissioners are usually called, such meeting to be held within fourteen days after every such

that they the said Duncan Grant, Charles Gordon, [A. B.], and [C. D.], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, do and shall receive or recover and enforce payment of the interest and annual produce of the said trust monies and securities, as and when the same shall from time to time become due and payable, and do and shall, under the exclusive direction and controul of the minister for the time being of the said parish of Forres, while there shall be such minister, and he shall be willing to act in the trust, and under the exclusive direction and controul of the oldest baillie for the time being of the same parish, while there shall be no minister thereof, or no such minister who shall be willing to act in the said trust, lay out and invest the said interest and annual produce, when so received or recovered, in the purchase of coals, and under the like direction and controul, divide or distribute the said coals which shall be so purchased, unto and amongst the poor of the said town of Forres during winter, in the manner directed by the said will of the said James Dick as hereinbefore is mentioned; PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for the said Duncan Grant, Charles Gordon, [A. B.], and [C. D.], and the survivors

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

Power to change the securities.

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vacancy, or as near thereto as circumstances will permit; *And* that every trustee who shall be appointed as last aforesaid, shall have the same powers and authorities in every respect as the trustee in whose place he shall be substituted; *And* that with all convenient speed after the appointment of any such new trustee as aforesaid, the trust estates, monies, funds, securities, and premises, which shall be, or shall have been vested in the trustee in whose place such new trustee shall be appointed, jointly with such co-trustees as aforesaid, shall, at the expense of the said trust premises, be conveyed, assigned, and transferred, in such manner as that the same may become legally and effectually vested in the surviving or continuing trustees, jointly with the said new trustee or trustees, upon the trusts hereinbefore declared or referred to of and concerning the same: PROVIDED ALWAYS, and it is hereby expressly declared, that the said [*the eight last named*

and for transferring the trust funds to the new and old trustees jointly.

Clause for the indemnity of the trustees.

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

and survivor of them, and the executors, administrators, and assigns of such survivor, with the consent and approbation in writing of the minister and oldest baillie for the time being of the said parish of Forres, to alter and vary the securities in or upon which the aforesaid trust monies, or any part thereof, may for the time being be laid out and invested for other securities of the like nature, as occasion may require, or they or he shall think fit; PROVIDED ALWAYS, and it is hereby further declared, that when and so often as the number of the trustees for time being of these presents shall, from death, or unwillingness, or incapacity to act, be less than three, the vacancy shall be supplied by the appointment of such other persons as the minister and oldest baillie for the time being of the said parish of Forres shall, by any deed or writing under their hands and seals, choose or nominate in that behalf; *And* that with all convenient speed after the appointment of any such new trustees as aforesaid, the said trust monies and securities shall, at the expense of the said trust fund, be conveyed, assigned, and transferred in such manner, as that the same may become legally and effectually vested in the surviving or continuing trustees, jointly with the said new trustees, upon the trusts hereinbefore declared or referred to of and concerning the same; and that every new trustee who shall be so appointed shall have the same power and authorities as the trustee in whose place he

Power for changing the trustees.

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trustees, being commissioners of the signet], and the trustees who shall be hereafter appoined in their or any of their place or stead, under the provisions hereinbefore in that behalf contained, and their respective heirs, executors, and administrators, shall be accountable only for such monies as they respectively shall actually receive by virtue of these presents, or the decrees or orders hereinbefore mentioned or recited, and shall not be answerable the one for the others of them, or for signing receipts for the sake of conformity, or for any broker, banker, agent, solicitor, or other person with whom the trust funds and premises, or any part thereof, may be deposited or trusted, in pursuance or for the purposes of these presents, or for any loss or damage, &c." (*as above*).

shall be substituted; *And* that if the persons to whom the power of appointing new trustees is hereby given or reserved, shall not, at the time of exercising the same power, be trustees of these presents, it shall be lawful for them to appoint themselves, or either of them, such trustees, if they shall think fit so to do, any thing hereinbefore contained, or to be inferred, to the contrary thereof in any wise notwithstanding; PROVIDED ALWAYS and it is hereby lastly declared, that the trustees hereby appointed, or to be appointed under the provision hereinbefore in that behalf contained, and their respective heirs, executors, and administrators, shall be accountable only for such monies as they respectively shall actually receive, and shall not be answerable the one for the other or others of them, or for signing receipts for the sake of conformity, or for any broker, banker, agent, solicitor, or other person with whom the trust funds and premises, or any part thereof, may be deposited or trusted, in pursuance or for the purposes of these presents, or for any loss or damage which may happen to the trust funds and premises, except such loss or damage as shall happen by or through their respective means or procurement, or wilful neglect or default; *And* that it shall be lawful for the said trustees, by and out of the said trust funds and premises, to reimburse themselves, and allow their co-trustees all the costs, charges, and expenses which they or any of them shall pay, incur, sustain, expend, be at, or be put unto, in or about the execution of the aforesaid trusts, or any of them, or in anywise in relation thereunto. IN WITNESS, &c.

DECLARATION OF TRUST OF A LEGACY TO BE PAID TO THE TRUSTEES OUT OF CHANCERY, ON THE EXECUTION OF THE DEED.

Clause for the indemnity of the trustees.

DECLARATION OF TRUST OF A SUM OF MONEY, BY REFERENCE TO THE DEED ON WHICH IT IS ENDORSED.

DECLARATION *of* TRUST *of a Sum of* 1033*l.* 6*s.* 8*d.* *by reference to the Trusts declared in the Deed on which it was* ENDORSED (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME; the within named Duncan Grant and Charles Gordon, and the within mentioned [A. B.] and [C. D.], send greeting: WHEREAS the sum of one thousand and thirty-three pounds six shillings and eight pence, directed to be paid to the said Duncan Grant and Charles Gordon, as in the within written indenture is mentioned, has been since duly paid to them, and they have thereout applied the sum of thirty-three pounds six shilings and eight pence in the purchase of coals, pursuant to the trust or direction for that purpose in the same indenture contained, and have paid the sum of one thousand pounds, (the residue of the said sum of one thousand and thirty-three pounds six shillings and eight pence,) unto [X. Y] of, &c. esq.; *And* for securing the repayment of the said sum of one thousand pounds, with interest for the same after the rate of five pounds for one hundred pounds by the year, the said [X. Y] has, at the request and by the direction of the said Duncan Grant and Charles Gordon, given and executed to the said Duncan Grant, Charles Gordon, [A. B.], and [C. D.], his heritable bond, bearing date the day of , now last past, whereby the estates of the said [X. Y.], in the county of , have become chargeable with the same sum and interest, as therein mentioned: NOW KNOW YE, that in pursuance and performance of the agreement in the said within written indenture in this behalf mentioned, THEY the said Duncan Grant, Charles Gordon, [A. B.], and [C. D.], do hereby severally and respectively declare and agree that they the said Duncan Grant, Charles Gordon, [A. B.], and [C. D.], their heirs, executors, administrators, and assigns, shall and will stand and be seised and possessed of and interested in the said sum of one thou-

Recites that the sum of —*l.* in the within indenture mentioned, has been paid to the trustees,

and that they have laid out ——*l.* in coals, and paid —*l.* to X. Y.

and that X. Y. hath given his heritable bond for payment of that sum, with interest, to the trustees and two additional persons.

Declaration by the trustees and the two other additional persons, that they will stand possessed of the trust fund upon the trusts in the within indenture declared thereof.

(*a*) The last precedent.

sand pounds and securities, which have been so paid and given to them the said Duncan Grant, Charles Gordon, [A. B.], and [C. D.], as aforesaid, and the interest and annual produce thereof, upon the trusts, and with and subject to the powers and provisoes in the said within written indenture expressed or declared of and concerning the same; *And* shall and will hold or dispose of and apply the same accordingly. In witness, &c.

DECLARATION OF TRUST OF A SUM OF MONEY, BY REFERENCE TO THE DEED ON WHICH IT IS ENDORSED.

Release *in* Fee *of a Messuage or Tenement and Premises in Street, in the City of London, for the Purposes of the* Baptist Missionary Society; *and* Assignment *of a Term of One Thousand Years in the same Premises, in Trust to* Attend *the Inheritance.*

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

THIS INDENTURE, made the day of , Between [*vendor*] of, &c. of the first part; [*treasurers of the society*] of, &c. of the second part; [*trustees of the premises*] of, &c. of the third part; [*assignor of the term*] of, &c. of the fourth part; and [*assignee of the term*] of, &c. of the fifth part: Whereas by indentures of lease and release and assignment, bearing date respectively on or about the and days of , the release and assignment being made, &c. between [A. B.], of &c. of the first part; the said [*vendor*] of, &c. of the second part; [C. D.] of, &c. of the third part; and the said [*assignor of the term*], of the fourth part; the messuage or tenement, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and their appurtenances, were (for the considerations in the said indentures mentioned,) conveyed by the said [A. B.], unto and to the use of the said [*vendor*], his heirs and assigns for ever; *And* by the said indenture of release and assignment, the same messuage or tenement, hereditaments, and premises, and their appurtenances, were (for the considerations thereinbefore expressed,) assigned by

Parties.

Recital of the conveyance of the fee to the vendor;

and of an assignment of a term to a trustee for him, and to attend.

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

the said [C. D.] unto the said [*assignor of the term*], his executors, administrators, and assigns, for the then residue and remainder of a certain term of one thousand years, created therein by an indenture of demise, bearing date on or about the day of , one thousand eight hundred and sixty-five, and made, &c. between [E. F.], therein described, of the one part, and [G. H.], therein described, of the other part; *In trust* nevertheless for the said [*vendor*], his heirs and assigns, and to attend the inheritance; AND WHEREAS some time in or about the year 17 , several ministers and other persons who felt interested in the welfare of the churches of protestant dissenters in England called *Particular Baptists*, raised by subscription a public fund or stock for the support and maintenance of ministers of that denomination, and for providing for a succession of such ministers, which fund or stock is known by the name of "The Particular Baptist Fund in London;" AND WHEREAS part of the said fund consists of stock which has been bequeathed to the treasurer of the said fund in trust to apply the interest thereof only to the purposes of the said fund, (which stock is denominated the inalienable stock of the fund,) and other part of the said fund consists of donations and subscriptions which have from time to time been made to the same fund, and of the yearly collections which are made to the said fund by different Particular Baptist churches in or near London, and other places in England; AND WHEREAS in or by a certain printed book, entitled "Rules and Orders of the Particular Baptist Fund in London," it is stated (among other things), as follows (that is to say); *That* the said fund shall be for the use and advantage of those churches only that go under the denomination of Particular Baptists; *That* the managers of the said fund shall be the elders and messengers of the Particular Baptist churches assembling in the following places in or near London (that is to say), Carter Lane, Southwark, &c. &c.; *That* such of the said churches as have made a present to the capital of the said fund, of the sum of fifty pounds, may send their elder and one messenger to concur in transacting the business of the fund; such as have made a present of one hundred pounds, or more, may send their elder and two

The establishment of the Baptist fund.

The regulations of the fund, as stated in a certain book.

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

messengers; and such as have made a present of one hundred and fifty pounds or more, may send their elder and three messengers, but that no church shall send more than three messengers; *That* the said elders and messengers, being annually appointed by their respective churches, shall meet and dine together on the first Tuesday in March in every year, to manage the affairs of the said fund, and shall choose the following officers, namely, three treasurers, three trustees, two auditors, a key keeper, and a secretary; *That* any other church of the same denomination in or near London, may, on the approbation of the said managers, be admitted to send their elder and a messenger or messengers, to concur in transacting the business of the said fund, on the same terms with the churches before mentioned; *That* the managers may also associate with themselves, any particular persons who make a present of a sum not less than fifty pounds, to be added to the capital of the said fund; *That* the treasurers shall give proper securities to the trustees for all monies either in their hands, or in their names in the public stocks, that such money may be given up or applied as the managers shall direct; *That* besides the meeting in March, the managers shall have other meetings by adjournment, as business may require, any seven of which managers (one of them being a pastor), shall make a quorum, provided such seven belong to any three of the before mentioned churches; *That* the distributions of the said fund shall be annual, and made for the relief of ministers and churches of the Particular Baptist denomination in England and Wales, the education of young persons of the same persuasion for the ministry, donations of books to young students or ministers, and for any other charitable purpose which the managers shall approve; *That* the secretary shall take down the minutes of each meeting, and when confirmed, transcribe them fair into a book; *That* such part of the capital of the said fund, as is at the discretion of the managers, shall not be diminished, nor any of it sold out, without each manager being first summoned, and not less than two-thirds of the managers then present consenting to it;" AND WHEREAS the said [*treasurers*] are the present treasurers of the said Particular Baptist Fund; *And* the said [*trustees*] are the present

That the parties of the second and third parts are the present treasurers and trustees of the fund;

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

trustees thereof; and [X. Y.], of, &c. is the present secretary to the managers of the same fund; AND WHEREAS the managers of the said fund have long been desirous of obtaining a commodious house or room for holding their meetings and for transacting the business connected with the said fund; AND WHEREAS the said messuage or tenement, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, with the appurtenances, were, by the direction of the said [*vendor*], put up to sale by public auction by Mr. , at the Auction Mart in the said city of London, on the day of last, at twelve o'clock at noon, in one lot, by a certain printed particular of sale; AND WHEREAS the said [*first named treasurer*], with the privity and consent of the said [*other treasurers*], attended at the said auction and bid for the said lot, on behalf of the managers of the said Particular Baptist Fund, and being the highest bidder for the said lot, was declared the purchaser thereof, at or for the price or sum of pounds; AND WHEREAS at a meeting of the present managers of the said Particular Baptist Fund, held at , on the day of , (to which meeting each of the present managers was first summoned), it was unanimously resolved and agreed, that the purchase so made by the said [*first named treasurer*] on behalf of the said fund as aforesaid, should be completed; *And* that the said purchase money or sum of pounds, should be paid out of that part of the capital of the said fund which is disposable, at the discretion of the said managers (*a*); *And* that the said messuage or tenement, hereditaments, and premises, so purchased as aforesaid, and their appurtenances, should be conveyed

that the managers have long wanted a house for the purpose of their meetings, &c.

that the aforesaid premises were lately put up to auction;

that one of the trustees attended at the sale, and bought the premises for the benefit of the fund.

The agreement of the managers, at a special meeting, to adopt the purchase,

(*a*) In the margin of the draft is the following note:—

"Some doubt may be entertained as to the propriety of investing the trust monies in this purchase; but upon the whole I am disposed to think, that if the investment is sanctioned by the managers at a meeting duly convened according to the 17th rule, the treasurer will not be responsible for any loss that may arise in consequence of their completing the purchase. The 9th rule declares, that the distribution of the fund shall be annual; but that provision would probably not be considered to control the general power over the fund, which, from the other rules, was evidently intended to be vested in the managers."

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

to the said [*trustees*], their heirs and assigns, upon and for the trusts, intents, and purposes, hereinafter declared concerning the same; *And* that the said term of one thousand years created in the same premises, by the said indenture of the day of as aforesaid, should be assigned to the said [*assignee of the term*], for the residue thereof, upon the trusts hereinafter mentioned; AND WHEREAS, in pursuance and performance of the said agreement in this behalf, and of the resolution so passed at such meeting as aforesaid, the said [*treasurers*] have this day, with and out of the monies belonging to that part of the said capital of the said fund which is disposable at the discretion of the said managers, paid to the said [*vendor*], the sum of pounds of lawful money of Great Britain, as the said [*vendor*] doth hereby admit and acknowledge, and the said [*treasurers*] do hereby respectively testify and declare: NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said hereinbefore recited agreements, and of the resolutions so passed at such meeting as aforesaid, and in consideration of the said sum of pounds, so paid by the said [*treasurers*] to the said [*vendor*] as hereinbefore is mentioned and recited, and (*of a nominal consideration to the vendor from the trustees*), HE the said [*vendor*], at the request and by the direction, and upon the nomination of the said [*treasurers*], (testified, &c.) *Hath* granted, bargained, sold, aliened, released, and confirmed, *And*, &c. unto the said [*trustees*], (in their actual possession, &c.) and their heirs, ALL THAT messuage, &c. (*parcels*), Together with, &c. (*general words*), *And* the reversion, &c. *And* all the estate, &c. TO HAVE AND TO HOLD the said messuage or tenement, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and their appurtenances, unto the said [*trustees*], and their heirs, *To the use* of them the said [*trustees*], their heirs and assigns for ever; *But* nevertheless, upon and for the trusts, intents, and purposes, hereinafter expressed and declared concerning the same: AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, and the said [*treasurers*] do hereby expressly direct that the said [*trustees*], their heirs and assigns,

and the payment by the treasurers of the purchase-money out of the trust fund.

First witnessing part.

The vendor, in consideration of the said sum of —*l.*, conveys, at the request of the treasurers, to the trustees,

Parcels.

Habendum to the trustees in fee, upon the trusts aftermentioned.

Declaration that the trustees shall stand seised of the tru st heredita-

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

shall stand and be seised of and interested in the said messuage or tenement, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, upon and for the trusts, intents, and purposes hereinafter declared concerning the same, (that is to say); *Upon trust* that they the said [*trustees*], or the survivors or survivor of them, or the heirs or assigns of such survivor, do and shall permit or suffer all such part or parts of the said messuage or tenement, hereditaments, and premises hereby granted and released, or intended so to be, as the managers for the time being of the said Particular Baptist Fund, or the major part of them present at any of their said meetings, or at any meeting of them to be called as hereinafter is mentioned, shall from time to time select and set apart for that purpose, to be used and enjoyed by the said managers for transacting the business of, or relating to the said Particular Baptist Fund, and for holding meetings of the said managers, or of the subscribers to the said fund, and also for such other charitable purposes, and under such regulations, as the managers for the time being of the said Particular Baptist Fund, or the major part of them present at any of their said meetings, or at any meeting to be called as hereinafter is mentioned, shall order and direct; *And* do and shall, from time to time, let and demise the other and remaining part or parts of the said messuage or tenement, hereditaments, and premises, unto such person or persons, for such term or terms of years, at such yearly rent or rents, and under and subject to such stipulations, conditions, covenants, and agreements, as the said managers for the time being of the said Particular Baptist Fund, or the major part of them present at any of their said meetings, or at any meeting to be called as hereinafter is mentioned, shall from time to time direct or approve; *And upon this further trust*, that they the said [*trustees*], or the survivors or survivor of them, or the heirs or assigns of such survivor, do and shall, with and out of the rents, issues, and profits of the said messuage or tenement, hereditaments, and premises hereby granted and released, or intended so to be, and their appurtenances, in the first place, pay, satisfy, and discharge all such of the taxes, rates, assessments, and impositions,

ments upon the trusts following, viz.

Upon trust to permit such parts thereof as shall be set apart for that purpose, to be used for holding meetings of the managers, &c.

and to demise the residue of premises;

and out of the rents to pay the taxes, rents, &c. payable for the trust premises;

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

which now are or shall hereafter be taxed, charged, assessed, or imposed upon or in respect of the same messuage or tenement, hereditaments and premises, as shall not be paid or discharged by the tenants or occupiers thereof; *And* in the next place, pay, satisfy, and discharge all such sum or sums of money, costs, and expenses as shall, under the authority or with the consent of the managers for the time being of the said Particular Baptist Fund, or the major part of them present at any of their said meetings, or at any meeting to be called as hereinafter is mentioned, be paid, incurred, or sustained, in or about repairing, painting, cleaning, altering, or improving the said trust premises, or in keeping the same insured against damage or destruction by fire; *And* do and shall pay the residue of the said rents, issues, and profits, as the same shall be received, unto the treasurer or treasurers for the time being of the said Particular Baptist Fund, to be added to and considered as part of the said fund, and to be applied accordingly, and the receipt of such treasurer or treasurers shall be a sufficient discharge for the same (*b*); *And upon this further trust*, that they the said [*trustees*], or the survivors or survivor of them, or the heirs or assigns of such survivor, do and shall, when thereunto requested by the managers for the time being of the said Particular Baptist Fund, or the major part of them present at any of their said meetings, or at any meeting to be called as hereinafter is mentioned, absolutely sell and dispose of the said messuage or tenement, hereditaments and premises hereby granted and released, or intended so to be, or any of them, or any part of the same, and the fee simple and inheritance thereof, by public auction or private contract, for such price or prices, and in such manner as the said managers, or the major part of them present at any such meeting as last aforesaid, shall order or direct; *And* do and shall, upon payment of the purchase money or purchase monies, convey and assure the hereditaments and premises which shall be so sold,

and also the expense of repairing and insuring the premises,

and to pay the residue to the treasurers of Baptist Fund, as part thereof;

and upon further trust, at the request of the managers, to sell the premises.

(*b*) A trust to raise money by way of mortgage was inserted in the draft, but struck out as unnecessary in this instance.

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

unto the purchaser or purchasers thereof, and his, her, or their heirs, or to such uses and in such manner as he, she, or they shall direct; *And* do and shall pay the said purchase money or purchase monies, or so much thereof as shall remain after discharging the costs and expenses of the said sale, and perfecting and completing the same, unto the treasurer or treasurers for the time being of the said Particular Baptist Fund, to be added to and considered as part of the said fund, and to be applied accordingly, and the receipt of such treasurer or treasurers shall be a sufficient discharge for the same: AND IT IS HEREBY AGREED AND DECLARED between and by the parties hereto, that the receipt or receipts in writing of the said [*trustees*], or the survivors or survivor of them, or the heirs or assigns of such survivor, for the monies to arise from such sale or sales as aforesaid, or for the rents, issues, and profits which shall be received or made of the said messuage or tenement, hereditaments, and premises hereby granted and released, or intended so to be, in the mean time and until the same shall be sold, shall effectually discharge the person or persons paying the same from being answerable or accountable for the misapplication or non-application thereof, or from being obliged to see to the application of the same: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said trustees hereby appointed, or to be appointed as hereinafter is mentioned, or any of them, or any of their heirs, shall happen to die, or be desirous of being discharged of and from, or refuse, or decline, or be incapable to act in the trusts hereby respectively in them reposed as aforesaid, before the said trusts shall be fully executed, performed, or discharged, *Then* and in such case, and when and so often as the same shall happen, it shall and may be lawful to and for the managers for the time being of the said Particular Baptist Fund, or the major part of them present at any of their said meetings, or at any meeting to be called as hereinafter is mentioned, by any note or writing under their hands, to nominate, substitute, and appoint any other person or persons to be a trustee or trustees, in the stead or place of the trustee or trustees so dying or desiring to be discharged, or refusing,

and pay the purchase-money to the treasurer of the fund.

Receipt clause.

Clause for changing trustees.

declining, or becoming incapable to act as aforesaid; *And* when and so often as any new trustee or trustees shall be nominated and appointed as aforesaid, the trust-hereditaments and premises shall be thereupon, with all convenient speed, conveyed and transferred in such sort and manner, and so as that the same shall and may be legally and effectually vested in the person or persons so to be appointed as aforesaid, either solely, or jointly with the then surviving or continuing trustee or trustees, as occasion shall require, upon and for the trusts, intents, and purposes hereinbefore declared concerning the same; *And* the person or persons so to be appointed as aforesaid shall have all the powers and authorities of the trustee or trustees in whose place he or they shall be substituted (*Clause for the indemnity of the trustees, as ante*, Vol. VII. p. 512); PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that no purchaser or other person claiming under or by virtue of these presents, shall require any further evidence that the trusts and powers hereinbefore contained have been executed or exercised at such request or with such consent as hereinbefore is mentioned, than a declaration or statement in writing to that effect, signed by the secretary for the time being, to the managers of the said Particular Baptist Fund, and by the minister or pastor for the time being of some one of the churches hereinbefore mentioned to be now connected with the said fund; *And* that no person or persons, except the trustee or trustees for the time being of these presents, shall be obliged to ascertain or enquire whether the persons signing such declaration or statement as aforesaid, as secretary and pastor, are or are not such secretary and pastor: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that for any of the purposes hereinbefore mentioned, a meeting of the managers for the time being of the said Particular Baptist Fund shall be held when and so often as occasion shall require; *And* that it shall be lawful for any three of such managers, or for the secretary for the time being to the said managers, at the request of any three of them, to call such meeting by sending to each of the said managers for the time being, or to his last known

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

Clause for preventing a purchaser of the premises from seeing whether the sale is made with the consent required.

Provision in regard to calling meetings of managers, when necessary.

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

place of residence, at least fourteen days before the time fixed for the meeting, a circular letter, signed by the person or persons calling such meeting, specifying the object of the meeting, and the day and hour at which the same shall be held; and every such meeting shall be held at or upon the said messuage or tenement, hereditaments, and premises hereby granted and released, or intended so to be, or some part thereof; *And* that no business shall be done at any meeting at which less than seven managers shall be present; AND the said [*vendor*] doth hereby for himself, &c. (*Covenant from the vendor to produce the hereinbefore recited indentures, see* Vol. IV. p. 180 *and* 194) (*c*):

Second witnessing part.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement in this behalf, and in consideration of the said sum of

Assignor of the term, at the request of the vendor, assigns to the assignee of it, the premises before granted and released.

pounds, so paid as hereinbefore is mentioned, and in consideration of, &c. (*nominal consideration*), HE the said [*assignor of the term*], at the request, and by the direction of the said [*vendor*], and upon the nomination of the said [*treasurer*] (testified, &c.), *Hath* bargained, sold, and assigned, and by these presents *Doth* bargain, sell, and assign, unto the said [*assignee of the term*], his executors, administrators, and assigns, ALL and singular the said messuage or tenement, hereditaments, and premises, hereinbefore granted and released or expressed, or intended so to be, and every part thereof, with their and every of their appurtenances, *And* all the estate, &c. TO HAVE AND TO HOLD the said messuage or tenement, hereditaments, and all and singular other the premises hereby assigned, or intended so to be, and every of them, and every part

Habendum for the remainder of the term of 1000 years,

Where lands are conveyed for charitable purposes, the covenants for title are usually entered into by a separate deed.

(*c*) By a separate deed, the vendor entered into covenants with the trustees for the title, and for the production of the deeds relating to the title prior to the conveyance recited in the above precedent. Such covenants are, in cases of this kind, usually entered into by a distinct deed from the conveyance, for the purpose of saving the expense of engrossing such covenants on the rolls of the Court of Chancery, in which court the deed of conveyance must be enrolled, pursuant to the mortmain act; and because the covenants can only be wanted for a definite period, while the trusts of the conveyance may last for ages.

RELEASE OF A MESSUAGE FOR THE BAPTIST MISSIONARY SOCIETY, AND ASSIGNMENT OF A TERM TO ATTEND.

thereof, with their and every of their appurtenances, unto the said [*assignee of the term*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of one thousand years, created therein by the said indenture of the day of as aforesaid, *In trust* nevertheless for the said [*trustees*], their heirs and assigns, and to assign and dispose of the same term from time to time, as they shall, in conformity with the trusts aforesaid, direct or appoint; *And* in the mean time, *In trust* to permit the same term to wait upon and attend the reversion, freehold, and inheritance of the said messuage or tenement, hereditaments, and premises hereby assigned, or intended so to be, and to protect the same from all mesne incumbrances, if any such there be; (*Covenant that assignor of the term has done no act to incumber*). IN WITNESS, &c.

In trust to attend the inheritance.

ASSIGNMENT OF A MESSUAGE FOR AN INFIRMARY.

ASSIGNMENT, *for the Residue of a Term of Years, of a Piece of Land at , with a Messuage or* INFIRMARY *lately built thereon, to* TRUSTEES, *for the Charitable Institution, called "The Royal Universal Infirmary for Children."*

THIS INDENTURE, made the day of , 183 , BETWEEN [*donor*] of, &c. of the first part; [*committee of managers*], of the second part; and [*trustees*], of the third part: WHEREAS in or about the month of 18 , a charitable institution or society was formed for administering prompt medical aid to the children of the poor residing in London and its suburbs, under the name or style of "The Royal Universal Infirmary for Children;" *And* it was then resolved and agreed, (amongst other things), that his most excellent Majesty should be re-

Parties.

Recites that in the year 18 , an institution was formed for giving medical aid to children of the poor in London and its suburbs, under the name of .

ASSIGNMENT OF A MESSUAGE FOR AN INFIRMARY.

quested to become the patron of the said institution; and that his royal highness the Duke of York, &c. &c. should be the vice-patron of the said institution; and that his grace the Duke of , should be the president of the said institution; and the right honorable the Earl of , and divers other noblemen and other persons then named, should be the vice-presidents of the said institution; and that every person who should subscribe to the said institution one guinea a year, should be an annual governor; and that every person who should subscribe to the said institution two guineas a year or upwards, should be an annual director; and that every person who should give or contribute to the said institution ten guineas at one time or within one year, should be a life governor; and that every person who should give or contribute to the said institution twenty guineas or upwards, at one time or within one year, should be a life director; and that each executor of every person who should bequeath to the said institution a legacy or sum of fifty pounds, should be a life governor; and that each executor of every person who should bequeath to the said institution a legacy or sum of one hundred pounds or upwards, should be a life director; and that the affairs of the said institution should be managed and conducted by a committee of twenty-five gentlemen, to be annually chosen from amongst the annual and life governors of the said institution, at a general meeting of the governors and directors, to be held on the first Wednesday in the month of November in every year; and that such committee, or any five of them, might make bye-laws subject to the approbation of the next general meeting; and that two general meetings of the said governors and directors should be held in every year, one on the first Wednesday in the month of May in every year, and the other on the first Wednesday in the month of November in every year; and that an extraordinary general meeting of the said governors and directors might be called by any of the vice-patrons or vice-presidents, or by any five members of the said committee of governors, or by any fifteen of the said governors and directors, by writing specifying the occasion of such meeting, and addressed to the secretary for the time being of the said institution, who should thereupon summon a meet-

and that certain resolutions were then passed, in regard to the management of the institution, and the rights and privileges of the different subscribers;

ASSIGNMENT OF A MESSUAGE FOR AN INFIRMARY.

ing accordingly by public advertisement; AND WHEREAS, by an indenture of lease bearing date the day of , 181 , and made or expressed to be made between [A. B.] therein described, of the one part, and the said [*donor*], of the other part; the piece or parcel of land or ground hereinafter described, and intended to be hereby assigned, and whereof a map or plan is drawn in the margin of these presents, with the rights of way and appurtenances thereto belonging, was, for the considerations in the said indenture mentioned, leased and demised by the said [A. B.], unto the said [*donor*], his executors, administrators, and assigns, for and during the term of ninety-nine years, to be computed from Christmas-day then last past, at the yearly rent of pounds, payable quarterly, as in the said indenture is mentioned, and under and subject to the covenants, conditions, and agreements, in the same indenture contained on the lessee's part to be observed and performed; AND WHEREAS some time in or about the month of , in the year 181 , the said [*donor*] contracted and agreed with the said [*committee of managers*], for the sale to them, at or for the price of pounds, of the said piece or parcel of land or ground hereinafter described, and intended to be hereby assigned, and their appurtenances, for the then residue of the said term of ninety-nine years created by the said hereinbefore recited indenture as aforesaid, at the rent, and subject to the covenants and agreements in the same indenture reserved and contained on the lessee's part to be paid, observed, and performed; AND WHEREAS, soon after the said contract or agreement for sale was entered into, the said [*committee of managers*] did cause or procure to be erected or built upon the said piece or parcel of land or ground therein comprised, the messuage or infirmary and buildings which are now standing and being thereon as hereinafter is mentioned; *And* did lay out and expend therein or thereabout, the sum of three thousand pounds and upwards, which sum was advanced in part by and out of the respective proper monies of the said [*committee of managers*], and in other part, by and out of certain monies which had been subscribed and contributed for that purpose by different friends and supporters of the said institution; AND WHEREAS at a general

That a lease of the premises aftermentioned was granted to the donor;

that he then sold them to the committee of managers of the above institution;

that since such agreement was entered into, the committee have caused an infirmary to be built on the land;

and that at a general meet-

ASSIGNMENT OF A MESSUAGE FOR AN INFIRMARY.

meeting of the governors and directors of the said institution, held at the said infirmary on the day of May now last past, it was unanimously resolved and agreed, that the purchase money or sum of pounds, so agreed to be paid to the said [*donor*] as hereinbefore is mentioned, should be paid out of the monies and funds of or belonging to the said institution; *And* that on payment thereof, the said piece or parcel of land or ground so agreed to be sold as aforesaid, with the messuage or infirmary and buildings which have been erected and built thereon, as hereinbefore is mentioned, and their appurtenances, should be assigned and made over to the said [*trustees*], their executors, administrators, and assigns, for the residue of the aforesaid term of ninety-nine years therein, *Upon* the trusts, and subject to the powers and provisoes hereinafter declared and contained of and concerning the same; NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*committee of managers*], with and out of certain monies in their hands belonging to the said institution, to the said [*donor*], in hand well and truly paid, at or immediately before the sealing and delivering of these presents, (the receipt of which said sum of pounds the said [*donor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*committee of managers*], and every of them, and their and every of their executors, administrators, and assigns), *And also*, in consideration of the sum of ten shillings of like lawful money, by the said [*trustees*], to each of them the said [*donor*] and [*committee of managers*] paid at or immediately before the sealing and delivering of these presents (the receipt whereof is hereby acknowledged), HE the said [*donor*], at the request and by the direction of the said [*committee of managers*], and upon the acceptance of the said [*trustees*], (testified by their respectively executing these presents), *Hath* granted, bargained, sold, assigned, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, and set over; *And* the said [*committee of managers*] *Have*, and every of them *Hath* bargained, sold, assigned, and con-

ing of the governors of the institution, it was agreed that the purchase-money of —*l.* should be paid out of the funds of the institution, and that the infirmary, &c. should be assigned to the trustees, Upon the trusts after mentioned.

Witnessing part. In consideration of —*l.* the donor assigns, and the committee of managers assign and confirm, unto the trustees,

ASSIGNMENT OF A MESSUAGE FOR AN INFIRMARY.

firmed, *And* by these presents *Do*, and every of them *Doth* bargain, sell, assign, and confirm, unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT piece or parcel of land or ground, situate, lying, and being on the east side of road, in the parish of , in the said county of , containing in length, from north to south, feet, or thereabouts, and in breadth, from east to west, feet or thereabouts, and bounded on the north side thereof by land of or belonging to the said [A. B.], on the west side thereof, by the said road, on the south side thereof, by a messuage and premises in the occupation of [ ], and on the east side thereof by a lane, leading from to , *And also* all that and those the messuage or infirmary, and other buildings, which had been lately erected and built, and are now standing and being on the same piece or parcel of land or ground, or some part thereof (which said piece or parcel of land or ground, messuage or infirmary, buildings, and premises, are particularly delineated and described in the map or plan thereof drawn in the margin of these presents), *Together* with all and singular the walls, rails, fences, ways, paths, passages, lights, easements, profits, advantages, and appurtenances whatever, to the said piece or parcel of land or ground, messuage or infirmary, building and premises hereby assigned, or intended so to be, belonging or in anywise appertaining, *And* all the estate, &c. TO HAVE AND TO HOLD the said piece or parcel of land or ground, messuage or infirmary, buildings, and all and singular other the premises hereby assigned, or intended so to be, and their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of ninety-nine years created thereon by the said hereinbefore recited indenture of lease as aforesaid, at, under, and subject to the rent, covenants, considerations, and agreements, in and by the same indenture respectively reserved and contained on the lessee's part to be paid, observed, and performed; *But* nevertheless, upon the trusts, and under and subject to the provisoes, agreements, and deductions hereinafter expressed and contained of and concerning the same, (that is to say); *Upon trust,*

Parcels.

Habendum to the trustees for the remainder of the term,

subject to the rents and covenants in the lease;

but upon the trusts aftermentioned, viz.

Upon trust to permit the pre-

ASSIGNMENT OF A MESSUAGE FOR AN INFIRMARY.

that they the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, during the said term of ninety-nine years, permit and suffer the said messuage or infirmary and buildings hereby assigned, or intended so to be, to be held, used, occupied, and enjoyed by such persons, for such purposes, and under and subject to such rules, regulations, and restrictions, and in such manner, as the committee of managers for the time being of the said institution shall at any of their meetings order, direct, or appoint; *And* do and shall, by and out of the monies and funds of the said institution, or by monies to be raised by mortgage of the said trust premises, pay the yearly rent of pounds, reserved by the said hereinbefore recited indenture of lease as aforesaid, as and when the same shall become payable, and perform all and singular the covenants and agreements in the same indenture contained, on the lessee's part to be performed, as and when the same ought to be performed; *And upon this further trust*, that they the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivors, *Do* and shall, at the request in writing of the major part of the governors and directors of the said institution present at any such general meeting as aforesaid, levy and raise by a mortgage of all or any part of the said trust-hereditaments and premises, such a sum or sums of money as the persons for the time being making such request shall order or direct, and for that purpose do and shall make and execute such assignments, demises, or other assurances, as the persons at whose request such mortgage shall be made, shall direct and approve; and also give to and vest in the mortgagee or mortgagees, such power of sale and leasing, and other powers, as the same persons shall think expedient and proper; *And upon this further trust*, that they the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivors, do and shall, at the request in writing of the major part of the governors and directors of the said institution present at any such general meetings as aforesaid, unless such request shall be revoked or countermanded by the major part of the governors and directors of the said institution present at any

mises to be used as the committee of managers for the time being shall direct;

and out of the monies of the institution, or by mortgage of the premises, to pay the rent and perform the covenants.

And upon further trust, at the request of the major part of the governor and directors of the charity, to raise money by mortgage of the trust premises;

and upon further trust, at the like request, unless countermanded at a general meeting of the institution, to sell the trust premises.

extraordinary general meeting to be held for that purpose within four calendar months next after such request shall have been given, absolutely sell and dispose of the said trust-hereditaments and premises, and their appurtenances, for the then residue of the said term, either by public auction or private contract, for such price or prices, and in such manner, as the persons at whose request such sale shall be made shall think fit and proper; *And* do and shall assign, or otherwise assure the said trust-hereditaments and premises, and their appurtenances, unto the purchaser or purchasers thereof, or his, her, or their executors, administrators, or assigns, or as he, she, or they shall in that behalf order or direct; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall stand and be possessed of the money which shall be received upon any mortgage or sale which shall be made under the trusts hereinbefore declared, upon and for such trusts, intents, and purposes, for the benefit of the said institution, as the major part of the governors and directors of the said institution, present at every such general meeting as aforesaid, shall from time to time direct or appoint; AND it is hereby further agreed and declared between and by the said parties hereto, that the receipt or receipts in writing of the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, for any money which shall be paid on any such mortgage or sale as aforesaid, shall effectually discharge the person or persons paying the same from being answerable or accountable for the misapplication or nonapplication of the money in such receipt or receipts expressed or acknowledged to be received, and from being in anywise liable to see to the application of the same; *And* that no person or persons, to or with whom any such mortgage or sale as aforesaid shall be made, shall be obliged to require any evidence that such mortgage or sale be made at such request as is hereinbefore in that behalf mentioned, or in any manner to enquire into the necessity, propriety, or regularity of the same mortgage or sale; PROVIDED ALWAYS, and it is hereby further agreed and declared

ASSIGNMENT OF A MESSUAGE FOR AN INFIRMARY.

Declaration of trust of the monies which shall be received on any mortgage or sale.

Declaration that the receipts of the trustees shall be good discharges, and that mortgagees and purchasers need not enquire into the propriety of the mortgage or sale.

ASSIGNMENT OF A MESSUAGE FOR AN INFIRMARY.

between and by the parties hereto, that when and so often as from death or disability, or disinclination to act, there shall be less than three acting trustees of the said trust-

Special provision for change of trustees.

hereditaments and premises, the vacancies in the number of trustees shall be supplied by the appointment of so many additional persons as will make up the number of six trustees, such appointment to be made by the major part of the governors and directors of the said institution present at any such general meeting as aforesaid; *And* that with all convenient speed after every such appointment, such assignments shall be made and executed (at the expense of the said trust-hereditaments and premises, or of the funds of the said institution) as shall be necessary, or shall be deemed advisable for vesting the said trust hereditaments and premises in the then acting trustees or trustee, jointly with such additional trustees; *And* that the new trustees who shall be so from time to time appointed as aforesaid, shall have the same powers and authorities in every respect as the trustees in whose place they shall be appointed;

Clause for the indemnity of the trustees.

PROVIDED ALWAYS, and it is hereby also agreed and declared between and by the parties hereto, that the trustees hereby appointed and to be appointed as aforesaid, and their respective executors, administrators, and assigns, shall be accountable for such monies only as they respectively shall actually receive by virtue of these presents, and and shall not be answerable the one for the other or others of them, or for signing receipts for the sake of conformity, or for any involuntary loss or losses, or (except as against the said [A. B.], his heirs and assigns, and the said [*donor*], his executors and administrators), for the payment of the rent, or the observance or performance of the covenants, conditions, and agreements, in and by the said hereinbefore recited indenture of lease reserved and contained on the tenant's or lessee's part to be paid, observed, and performed as aforesaid, unless the monies necessary for the payment or performance thereof be duly and previously provided by the treasurer for the time being of the said institution; *And further*, that it shall be lawful for the said trustees or trustee for the time being, by and out of the rents and profits of the said trust-hereditaments and premises, or by a mortgage of the same, or any part thereof,

ASSIGNMENT OF A MESSUAGE FOR AN INFIRMARY.

to raise, retain, and pay all such sums of money, costs, charges, and expenses, as they, or any of them, shall pay, incur, or sustain, in or about the execution of the trusts hereby in them reposed, or in relation thereunto, or in respect of the rents and covenants reserved and contained in the said hereinbefore recited indenture of lease as aforesaid, or any of them, or in reference thereto (*a*); AND the said [*donor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT and agree with and to the said [*trustees*], their executors, administrators, and assigns, that he the said [*donor*], his executors and administrators, and all persons whosoever claiming or to claim by, from, through, or under, or in trust for him, them, or any of them, shall and will from time to time, and at all times hereafter, at the request and expense of the said [*trustees*], their executors, administrators, or assigns, make, do, and execute all such further assignments, assurances, acts, deeds, matters and things, for the better and more perfectly and effectually assigning and assuring of the said piece or parcel of land or ground, messuage or infirmary, buildings and premises hereby assigned, or intended so to be, and their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, for the residue and remainder which shall be then unexpired of the said term of ninety-nine years, upon the trusts, and in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*trustees*], their executors, administrators, or assigns, or their or any of their counsel, shall be reasonably devised, or advised, and required (*b*). IN WITNESS, &c.

Covenant for further assurance.

(*a*) In this case, the parties were satisfied with a covenant for further assurance only. When all the usual covenants for title are entered into, it is advisable to have a separate deed for them. See note (*c*) to the last precedent, p. 408.

(*b*) The trustees did not covenant with the donor for payment of the rent, and performance of the covenants in the lease, but gave him a bond for that purpose. See title INDEMNITY.

CONVEYANCE OF HOUSES TO TRUSTEES, TO BE USED AS ALMSHOUSES.

CONVEYANCE *in* FEE *of Twelve Messuages or Tenements to* TRUSTEES, *to be occupied as* ALMSHOUSES; *and also of a Messuage or Tenement and Farm, for the Support of the Almshouses; and* DECLARATION *of* TRUST *of a Sum of* STOCK *transferred to the same Trustees for the like purpose.*

Parties.

THIS INDENTURE, made the day of , BETWEEN [*grantor*] of, &c. of the one part, and [*eight trustees*], of the other part: WHEREAS the said [*grantor*] is seised of or well entitled to the messuages or tenements, farm, lands, and hereditaments hereinafter described, and intended to be hereby granted and released, and their appurtenances, for an estate of inheritance in fee simple in possession; AND WHEREAS the said [*grantor*] is possessed of or well entitled to a sum of pounds three pounds per centum consolidated bank annuities, transferrable at the Bank of England; AND WHEREAS the said [*grantor*] is desirous of settling the messuages or tenements, farm, lands, hereditaments, and bank annuities, of or to which he is so seised and possessed as aforesaid, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter expressed and contained of and concerning the same; *And* hath requested the said [*trustees*] to act as trustees of the same messuages or tenements, farm, lands, hereditaments, and bank annuities, which they the said [*trustees*] have respectively consented and agreed to do; AND WHEREAS in pursuance of, and for carrying into effect the said desire in this behalf, the said [*grantor*] hath this day, with the privity and approbation of the said [*trustees*], (testified by their respectively being parties to, and executing these presents,) caused the said hereinbefore mentioned sum of

Recites that the grantor is seised in fee of the messuages and premises after described,

and is possessed of ——*l.* 3-per cents.;

and is desirous of settling the same upon the trusts hereinafter declared thereof;

that the trustees have agreed to accept the trusts;

and that the grantor has this day caused the bank annuities to be transferred to the trustees;

pounds three pounds per centum consolidated bank annuities, to be transferred into the names of the said [*trustees*], in the books of the governor and company of the Bank of England, to be held upon the trusts and in manner hereinafter mentioned, as they the said [*trustees*] do hereby admit and acknowledge: NOW THIS INDENTURE WITNESSETH, that in pursuance of and for carrying into effect the said desire in this behalf, and in consideration of the sum of ten shillings, &c. (*nominal consideration from the trustees to the grantor*), HE the said [*grantor*], *Hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *Doth*, &c. unto the said [*trustees*], (in their actual possession, &c. *reference to a lease for a year*), and their heirs, ALL that messuage or tenement, or farm-house, with the barns, stables, outbuildings, yards, garden, and appurtenances thereunto belonging, situate and being in the parish of , in the county of , called or known by the name of Farm, formerly in the occupation of , afterwards of , then of , and now or late of the said [*grantor*]; AND also all those several closes or pieces or parcels of arable, meadow, and pasture land or ground, situate and being in the said parish of , near or adjoining to the said messuage or tenement and premises hereinbefore described, and therewith now and for some years past used, held, occupied, or enjoyed, and containing in the whole acres or thereabouts, which said closes or pieces or parcels of land or ground, are now commonly called or known by the several names, and contain, according to a recent admeasurement thereof, the several quanties hereinafter mentioned and expressed (that is to say); The Upper Meadow, containing acres and roods; The Croft, containing acres, roods, and perches; The Lower Meadow, containing acres, &c. &c.; AND also all those twelve messuages or tenements, or alms-houses, situate and being in the said parish of , now lately erected and built by the said [*grantor*], and called 's Almshouses, *Together* with the gardens and appurtenances belonging to the same, the scite of which said messuages or tenements, or almshouses, gardens, and premises lastly hereinbefore

CONVEYANCE OF HOUSES TO TRUSTEES, TO BE USED AS ALMSHOUSES.

First witnessing part.

The grantor conveys to the trustees,

Parcels.

CONVEYANCE OF HOUSES TO TRUSTEES, TO BE USED AS ALMSHOUSES.

described, was formerly called or known by the name of Jackson's Meadow, and was lately purchased by the said [*grantor*], of and from [A. B.] of, &c. esquire, (all which said messuages or tenements, farm, lands, hereditaments, and premises hereinbefore described, with the respective names, quantities, dimensions, and abuttals thereof, are more particularly delineated and set forth in the map or plan drawn in the margin of the first skin of these presents); *Together* with, &c. (*general words*); *And* the reversion, &c.; *And* all the estate, &c. To HAVE AND TO HOLD the said messuages or tenements, farm, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and their appurtenances, unto the said [*trustees*] and their heirs, *To the use* of them the said [*trustees*], their heirs and assigns for ever; *But* nevertheless upon and for the trusts, intents, and purposes, and with, under, and subject to the provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same, (that is to say); *Upon trust* that they the said [*trustees*], or other the trustees for the time being of these presents, do and shall from time to time, and at all times hereafter, nominate and appoint such fit and proper person to be steward or manager of the messuages or tenements, farm, lands, hereditaments, and premises hereby granted and released, or intended so to be, as they the said trustees for the time being, or the major part of them, shall think proper; *And* do and shall require and take from the person so appointed, together with one or more surety or sureties, such bond or other security for the due and faithful discharge of his duties as such steward or manager, as they the said trustees for the time being, or the major part of them, shall think proper; *And* do and shall permit and suffer the person who shall for the time being be nominated and appointed steward or manager as aforesaid, to reside in, occupy, and enjoy the messuage or tenement, or farm-house, hereinbefore mentioned, with the outbuildings, garden, and appurtenances thereto belonging, and to cultivate and manage in a proper and husband like manner the farm and lands hereinbefore described, and sell and dispose of the produce thereof, and for those purposes to

Habendum to the trustees in fee, upon the trusts after declared, *viz.*

Upon trust to appoint a steward or manager of the estates;

and permit him to reside in the farm house, and carry on the business of the farm;

CONVEYANCE OF HOUSES TO TRUSTEES, TO BE USED AS ALMSHOUSES.

provide and keep such live and dead stock, and employ such servants, labourers, and work-people, as he may from time to time think fit, and generally to do all other acts and things for carrying on and conducting the business of the said farm, which may from time to time be necessary and proper; *And* do and shall cause and procure the person who shall for the time being be such steward or manager as aforesaid, to give and render to them the said trustees for the time being, on the day of , and the day of , in every year, or so soon thereafter as circumstances will permit, a true and particular account of all payments, disbursements, sales, purchases, transactions, matters, and things, which shall have been made or have happened during the preceding half-year in relation to the said farm and premises, or the business thereof, together with such vouchers, receipts, and other evidence in support of the same account, as they shall think reasonable; *And* do and shall, on the settlement of every such account, pay or allow to such steward or manager, such salary or recompense for his care, pains, and trouble in cultivating and managing the said farm and premises, and the business thereof, as they the said trustees for the time being shall think proper, or as shall have been previously agreed upon; *And* do and shall cause every such account, when finally adjusted and settled, to be entered into a book or books to be provided and kept for that purpose, by the said trustees for the time being; *And* do and shall cause or procure the same account, when so entered as aforesaid, to be respectively subscribed and certified to be correct by the steward or manager for the time being, and also by the said trustees for the time being; *And* do and shall stand and be possessed of and interested in the monies which shall be payable to them the said trustees for the time being, upon the settlement of every such account as aforesaid, upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same; *And upon this further trust*, that they the said trustees for the time being, do and shall permit and suffer each and every of the said twelve messuages or tenements, or almshouses, hereinbefore described, together with the gardens

and make and settle half-yearly accounts;

and allow the steward or manager a proper salary;

and cause the accounts to be entered into proper books, to be kept by the trustees and signed;

and stand possessed of the monies received by the trustees on the settlement of every such account, upon the trusts after mentioned; and upon further trust, to permit the almshouses to be occupied by

CONVEYANCE OF HOUSES TO TRUSTEES, TO BE USED AS ALMSHOUSES.

and appurtenances thereunto respectively belonging, to be from time to time, and at all times hereafter, held, occupied, and enjoyed by such poor woman, being a widow, and of the age of sixty years and upwards, and a native of one of the several parishes of , , or , in the said county of , as the said trustees for the time being, or the major part of them, shall nominate and appoint for that purpose; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, and particularly by and on the part of the said [*grantor*], that the nomination and appointment of a steward or manager of the trust premises, under the provision hereinbefore for that purpose contained, shall be revocable at the pleasure of the major part of the trustees for the time being of these presents; *But* that the nomination and appointment of any poor woman to occupy any of the almshouses hereinbefore mentioned, shall be deemed to be an appointment during the widowhood of the person appointed, unless such person shall afterwards act in such a manner as to induce three-fourths of the trustees for the time being to concur in an agreement for her expulsion from the premises, in which case she shall be liable to be immediately expelled (*a*); AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, and particularly by and on the part of the said [*grantor*], that the said [*trustees*], or other the trustees for the time being of these presents, shall stand and be possessed of and interested in all and singular the monies which shall be paid to them upon the settlement of every such half-yearly account as aforesaid, upon the trusts and in manner following, (that is to say); *Upon trust* that they the said trustees for the time being, do and shall, with and out of the same, in the first place, pay and discharge all the costs, charges, and expenses which shall be incurred or sustained

such poor women being widows of the age of 60 years and upwards, and natives of the parishes of ———, as the trustees shall nominate.

Declaration that the appointment of a steward shall be revocable at the pleasure of the major part of the trustees; but that the appointment of women to occupy the almshouses shall be deemed appointments for life, unless they shall afterwards act so as to induce three-fourths of the trustees to agree to their expulsion.

Declaration that the trustees shall stand possessed of the monies received on the settlement of the half-yearly accounts, Upon the trusts following, *viz.* to pay the expenses of executing the trusts;

(*a*) A power of leasing should have been inserted in this place, as it is often much better, and more profitable for the trustees of a charity to let the lands to a tenant at a rent, than to employ persons to cultivate the lands, or manage the farm on behalf of the charity, at a salary.

CONVEYANCE OF HOUSES TO TRUSTEES, TO BE USED AS ALMSHOUSES.

in or about carrying the trusts hereby created into execution, or so much thereof respectively as shall not have been previously paid by the said steward or manager for the time being, and allowed him in account on the settlement of such half-yearly accounts as aforesaid; *And*, in the next place, pay and discharge all the rates, taxes, assessments, and other outgoings which shall for the time being be payable for or in respect of the said trust-hereditaments and premises, or any of them; *And also* all the costs and expenses of keeping the said trust-hereditaments and premises, from time to time, in good and sufficient repair and condition, and in keeping the messuages or tenements, and other buildings standing and being thereon, insured against loss or damage by fire, in some respectable office or offices of insurance in London or Westminster, in such a sum or sums of money as the trustees for the time being shall think reasonable and proper; *And also* the expenses of keeping the said messuage or tenement, or farm-house, and the said messuages or tenements, or almshouses, supplied with suitable and proper goods and furniture for the use and accommodation of the steward or manager for the time being and such poor women as aforesaid; *And*, in the next place, pay to each of the poor women who shall for the time being occupy the said messuages or tenements, or almshouses, hereinbefore mentioned, the sum of five shillings a week, towards her respective maintenance and support, such payment to be made on Monday morning in every week; *And* do and shall apply the residue of the said trust monies which shall remain after answering the several trusts and purposes hereinbefore expressed, in furnishing and providing the poor women who shall for the time being occupy the said almshouses, or any of them, with such quantities of coals and candles, and such articles of clothing, as the trustees for the time being, or the major part of them, shall order or direct; *And* in case such residue shall be more than sufficient to answer and fulfil the trusts and purpose lastly hereinbefore mentioned, the excess, or so much thereof as the said trustees for the time being, or the major part of them, shall think fit, shall be paid to and divided amongst such poor widows, natives of and resident within the said seve-

to pay the taxes, &c.;

the expenses of repairs and insurance;

to pay each of the poor women 5*s.* a-week,

and to apply the residue in furnishing coals, clothing, &c.;

and the excess, or part thereof, to be divided amongst poor widows in the aforesaid parishes, and the remainder (if any) to be re-

CONVEYANCE OF HOUSES TO TRUSTEES, TO BE USED AS ALMSHOUSES.

ral parishes of , , and , or any of them, as the said trustees for the time being, or the major part of them, shall nominate and appoint in that behalf, and in such shares and manner as the trustees making such nomination and appointment shall think fit; and the remainder of such excess as aforesaid (if any), shall be retained towards discharging the future exigencies of the trust; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that when any poor woman who shall for the time being occupy any of the said messuages or tenements, or almshouses, shall die, the said trustees for the time being, or the said steward or manager for the time being, shall cause the remains of such poor woman to be decently interred, and the expenses of the funeral to be forthwith discharged by the steward or manager, and placed to his credit in his next half-yearly account: AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance of, and for carrying into effect the said desire of the said [*grantor*] in this behalf, HE the said [*grantor*], *Doth* hereby declare and direct, and the said other parties to these presents, so far as relates to their own acts and deeds, but not further or otherwise, *Do* hereby respectively agree, that they the said [*trustees*], or other the trustees for the time being of these presents, shall and will stand and be possessed of and interested in the said sum of pounds three pounds per centum consolidated bank annuities, which has been this day transferred into the names of the said [*trustees*] as hereinbefore is mentioned and recited, upon the trusts following, (that is to say); *Upon trust* that they the said [*trustees*], or other the trustees for the time being of these presents, do and shall receive and take the dividends and annual produce of the said sum of pounds three pounds per centum consolidated bank annuities, as and when the same shall from time to time become due and payable; *And* do and shall, with and out of the same, pay to each of the poor women who shall for the time being occupy the said messuages or tenements, or almshouses, hereinbefore described, the sum of three shillings a week, towards her respective maintenance and support, such payment to be made on Monday in every week, and the first payment

tained towards future expenses of the trust.

Direction in regard to the burial of the poor women who may die in the almshouses, and the payment of the expenses.

Second witnessing part. Declaration that the trustees will stand possessed of the sum of —*l.* 3 per cents, so transferred as aforesaid,

Upon trust to receive the dividends as they become due,

and thereout pay to each poor woman in the almshouses 3*s.* a week,

the first payment to be

thereof to be made on Monday the thirteenth day of January now next ensuing; *And* if on the thirteenth day of July then following, or on the thirteenth day of January, or the thirteenth day of July in any subsequent year, there shall remain in the hands of the trustees for the time being of these presents, any part of the dividends and annual produce out of which the weekly payments for the preceding half-year shall have been made, the same, after deducting all expenses incidental to or attending the receipt and payment thereof, shall be paid to and equally divided between the said poor women who shall for the time being be the occupiers of the aforesaid messuages or tenements, or almshouses. (*Clauses for appointing a new trustee upon every vacancy, and for the indemnity of the trustees* (*b*).) IN WITNESS, &c.

CONVEYANCE OF HOUSES TO TRUSTEES, TO BE USED AS ALMSHOUSES.

made on the 13th January next, and on the 13th of January and the 13th of July, the surplus dividends (if any) in hand, shall be divided between the poor women in equal shares.

(*b*) The MS. from which this precedent is taken, does not contain these clauses. The other precedents under this title contain so many similar clauses, that the omission in this instance may be easily supplied by reference to the other forms, when a deed like the present is required to be prepared.

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

CONVEYANCE *of a Piece of Land, with a* CHAPEL *erected thereon, to* TRUSTEES, *for the Purpose of procuring the same to be* CONSECRATED, *and devoted to* ECCLESIASTICAL *Purposes;—the Right of nominating the Clergyman to officiate therein, being reserved to the Grantor as Lord of the Manor of . Also a* DECLARATION *of* TRUST *of a Sum of Stock, transferred to the same Trustees, by way of* ENDOWMENT, *and to secure to the* MINISTER *a certain Income. (Variations for the Endowment being made by a Conveyance of Lands, and the Curate of the Chapel being appointed by the Trustees, with* SPECIAL *Clauses for changing Trustees*) (*a*).

THIS INDENTURE, made the day of ,

Parties.

BETWEEN [*lord of the manor*] of, &c. of the first part; [*bishop*] of, &c. [*patron*] of, &c. and [*vicar*] of, &c. of

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What constitutes a church.

(*a*) No person can build a church without the consent of the bishop of the diocese; or rather, no building can become a church in law, without his consent, and consecration of it. In former times, after founders had made their application to the bishop, and obtained his license, the bishop or his commissioners marked out the ground whereon the church was to be built, and set up a cross; and then the founders proceeded with the building, and after it was finished, endowed it, and procured it to be consecrated. The endowment must precede the consecration; for by the 16th canon of the council of London, it was expressly provided, that "a church shall not be consecrated until necessary provision be made for the priest."

As to the manner of consecrating a church.

Bishop Laud's mode, as stated by Dr. Burn.

In the church of England, every bishop is left to his own discretion as to the form of consecrating churches and chapels. In 1630, Bishop Laud consecrated St. Katherine's Creed Church, in London, in the following ceremonious manner:—"He came on a Sunday (being the 16th day of January, 1630,) to the west door of that church, and some persons who were prepared for that purpose, spoke aloud these words:

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

the second part; and [*trustees*] (*b*), of the third part: WHEREAS there being no place of worship of sufficient proximity to accommodate the inhabitants of the village of and the adjacent places in the several parishes of and , in the county of , the said [*lord of the manor*] lately agreed, in order that the said inhabitants might enjoy the benefit of having divine service once at least every sabbath day, to permit a chapel to be erected and built on a piece or parcel of land or ground belonging to him in the said village of , and to convey the same in manner hereinafter mentioned; *And* a chapel hath been accordingly since erected and built thereon; AND WHEREAS the expenses of erecting and building the said chapel have been defrayed in part out of funds subscribed by certain well disposed persons residing in or near the said village of , and in other part by a subscription and contribution from the society for the promoting the enlargement and building of churches and chapels; AND WHEREAS part of the expenses incurred in the erection of the said chapel is still unpaid, and

recites that the lord of the manor, for the accommodation of the inhabitants of — village, hath agreed to permit a chapel to be erected on a piece of his land in the said village, and that such chapel has been since built;

that the expenses of building the chapel have been paid partly out of subscriptions, partly by the society for building chapels, and partly by and out of monies lent for that purpose;

'*Open, open, ye everlasting doors, that the King of Glory may enter in.*' Immediately the doors were opened, and the bishop and some other doctors entered. Then he kneeled, and with eyes lifted up, and his arms spread, he pronounced the place to be holy, in the name of the Father, and of the Son, and of the Holy Ghost. Then he threw some of the dust of the church into the air, several times, as he approached the chancel; and when he came to the rails of the communion table, he bowed towards it several times. Then they all went round the church, repeating the 100th Psalm; and afterwards, a form of prayer, which concluded thus: '*We consecrate this church, and set it apart to thee, O Lord Christ, as holy ground, not to be profaned any more to common use.*' Returning to the communion table, he pronounced curses against those who should profane that place; and at every curse, he bowed towards the east, and said, '*Let all the people say Amen.*' Afterwards he pronounced blessings on all those who should be benefactors, and repeated, '*Let all the people say Amen.*' Then there was a sermon; and after that, the sacrament was adminis-

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(*b*) There were five trustees, of whom two were the patron and vicar.

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

part thereof has been paid out of monies advanced and lent for that purpose, but to be repaid with interest after the rate of four pounds for one hundred pounds by the year; AND WHEREAS the said chapel which hath been so erected and built as aforesaid, hath been erected and built with the consent of the said [*bishop*] as the diocesan of the said parish of , of the said [*patron*], as the patron of the said vicarage of , and of the said [*vicar*], as the vicar of the said vicarage, and the said [*bishop*], [*patron*], and [*vicar*], as such diocesan, patron, and vicar as aforesaid, have consented to the endowment thereof hereinafter made, on the terms and conditions hereinafter expressed, as they do hereby respectively testify and declare: AND WHEREAS the said [*lord of the manor*], out of a pious desire to promote the interests of religion by contributing to the funds of the said chapel, hath this day transferred the sum of pounds, three pounds per cent. consolidated bank annuities, into the names of the said several persons parties hereto of the third part, to be held by them upon the trusts and for the

that the chapel has been built with the consent of the diocesan, patron, and vicar, and that they have agreed to the endowment thereof after made;

that the lord of the manor has transferred to the trustees the sum of —— pounds 3 per cent. consols, upon the trusts after mentioned;

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tered; and when he came near the altar, he bowed seven times; and coming to the bread, he gently lifted up the napkin, which he laid down again, and withdrew, and bowed several times; then he uncovered the bread, and bowed as before; the like he did with the cover of the cup; then he received the sacrament, and gave it to some principal men; after which, many prayers being said, the solemnity of the consecration ended." See 1 Burn Ecc. Law, 326.

The mode agreed on in convocation in 1712, and now generally used.

In the year 1712, a form of consecrating churches and chapels, and churchyards, or places of burial, was sent down from the bishops to the lower house of convocation, and was altered by the committee of the whole house; and was afterwards, with some alterations, agreed to; but as it did not receive the royal assent, it was not injoined to be observed. It is, however, now generally used.

Preparatory to the consecrating of a church, the church is to be pewed, and furnished with a reading desk, common prayer book, and great bible, and one or more surplices, as also with a pulpit and cushion, a font, and a communion table, and with linen and vessels for the same. The endowment, and the evidences thereof, are to be laid before the bishop, or his chancellor, some time before the day appointed, in order to the preparing of the act or sentence of consecration against that day. An intimation of the bishop's intention to consecrate the church, with

intents and purposes hereinafter expressed and declared of and concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement in this behalf, and for the purpose of effectuating the objects and desire aforesaid, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, to the said [*lord of the manor*] by the said several persons parties hereto of the third part paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), HE the said [*lord of the manor*], *Hath* given, granted, bargained, and sold, *And* by this present deed of bargain and sale, intended to be enrolled in his majesty's high court of Chancery pursuant to the directions in the statute made for that purpose, *Doth* give, grant, bargain, and sell unto the several persons parties hereto of the third part and their heirs, ALL THAT piece or parcel of land or ground lying and being at or near in the said parish of , and containing by admeasurement , and formerly belonging to and occupied and held with a certain messuage, &c. *And* also all that the

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

Witnessing part.

In pursuance of the aforesaid agreement, the lord of the manor bargains and sells to the trustees,

Parcels.

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the day and hour appointed for it, is to be fixed on the church door at least three days before. A chair is to be set for the bishop on the north side of the communion table, within the rails, and another for his chancellor, without the rails on the same side; and all things are to be prepared for a communion. The church is to be kept shut, and empty, till the bishop comes, and it be opened for his going in.

The form of consecrating is to be as follows: The bishop is to be received at the west door, or at some other part of the church or churchyard which is most convenient for his entrance, by some of the principal inhabitants. At the place where the bishop is received, a petition is to be delivered to him by some one of the persons who receive him, praying that he will consecrate the church. The petition is to be then read by the register. The bishop, his chaplains, the preacher, and the minister who is to read divine service, together with the rest of the clergy, if any other be present, enter the church and repair to the vestry, or if there be no vestry, to some convenient part of the church, where as many as are to officiate put on their several habits; during which time the parishioners are to repair to their seats, and the middle aisle is to be kept clear. As soon as the church is quiet, the bishop and his chaplains, with the preacher and the minister who is to officiate, and the rest of the clergy, if any other be present, return

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

said chapel which hath been lately erected andbuilt on the same piece or parcel of land or ground; *Together* with, &c. (*general words*); *And* all the estate, &c. To HAVE AND TO HOLD the said piece or parcel of land or ground, chapel, hereditaments, and all and singular other the premises hereinbefore given, granted, bargained, and sold, or expressed and intended so to be, with their and every of their appurtenances, unto the said several persons parties hereto of the third part, their heirs and assigns for ever; *Upon trust* that they, and the survivors and survivor of them, his heirs or assigns, do and shall use their or his best endeavours to procure the proper diocesan to consecrate the

Habendum to the trustees in fee;

Upon trusts to procure the chapel to be consecrated and devoted to ecclesiastical purposes;

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to the west door, and go up the middle aisle to the communion table, repeating the 24th psalm alternately as they go up, the bishop one verse, and they another. After the bishop and his chaplains go within the rails,—the bishop to the north side of the communion table, and the chaplains to the south side,—the minister officiating goes to the reading desk, and the preacher to some convenient seat near the pulpit. The bishop, sitting in his chair, is to have the instrument or instruments of donation and endowment presented to him by the founder, or some proper substitute, which he lays upon the communion table; and then, standing up and turning to the congregation, says, "Dearly beloved in the Lord: forasmuch as devout and holy men, as well under the law as under the gospel, moved either by the sacred inspiration of the Blessed Spirit, or by the express command of God, or by their own reason and sense of the natural decency of things, have erected houses for the public worship of God, and separated them from all profane and common uses, in order to fill mens minds with greater reverence for his glorious majesty, and affect their hearts with more devotion and humility in his service, which pious works have been approved and graciously accepted by our heavenly father: let us not doubt but he will also favorably approve our godly purpose of setting apart this place in solemn manner to the performance of the several offices of religious worship, and let us faithfully and devoutly beg his blessing on this our undertaking." The bishop then kneels and repeats a form of prayer; and several other acts, purporting to be religious services, are afterwards performed, which it is unnecessary here to state.

All dissenters from the established church disapprove of consecrations of buildings for worship, as *they* find some difficulty in understanding how one *place* can be more HOLY than another.

same, and to grant a license for its being for ever henceforth used as a place for the celebration of divine service, according to the rites of the church of England, and to be devoted to ecclesiastical purposes, but not to interfere in any respect with the parochial and other privileges, immunities, or rights of the parish church of , or of the ministers thereof (*c*) ; *And* for such clergyman or minister in holy orders to officiate in such chapel, as shall from time to time be presented thereto by the said [*lord of the manor*], his heirs or assigns, lord or lady or lords or ladies for the time being of the manor of ; PROVIDED ALWAYS, that if the said [*lord of the manor*], his heirs or

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

and to permit such clergyman to officiate therein as the lord of the manor shall from time to time appoint, or in case the

(*c*) The following trusts and provisions are well drawn, and will be found very useful in preparing a deed for the like purpose:

"AND IT IS HEREBY AGREED AND DECLARED between and by the parties to these presents, that the said several persons parties hereto of the sixth part, their heirs and assigns, shall stand and be seised or possessed of and interested in the said chapel, piece or parcel of land and hereditaments hereby firstly granted and released, or intended so to be, and their appurtenances, *And* also of and in the said closes or pieces or parcels of land and hereditaments hereby secondly granted and released, or intended so to be, and their appurtenances, *Upon* and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed and contained of and concerning the same, (that is to say); *As* to the said chapel, *Upon trust,* that they the said several persons parties hereto of the sixth part, and the survivors and survivor of them, and the heirs and assigns of such survivor, *Do* and shall, for the benefit of the inhabitants of the hamlet of aforesaid, permit and suffer divine service, burials, and sacraments, according to the rites, ceremonies, and forms of the church of England, to be respectively performed and administered at the said chapel, at all reasonable and proper times ; *And* do and shall from time to time let the pews and seats in the said chapel, to such of the inhabitants of the said hamlet, and upon such terms and conditions, as they the said several persons parties hereto of the sixth part, and

Declaration that the trustees shall stand seised of the trust premises upon the trusts following, *viz.*

As to the chapel, upon trust to permit divine service to be performed therein according to the rites and ceremonies of the Church of England ;

and to let the pews and seats to the inhabitants of the hamlet ;

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

assigns, lord or lady or lords or ladies of the said manor of , shall omit, neglect, or refuse to present such proper clergyman to the said chapel, for the space of six calendar months from and after the consecration thereof, or at any time or times thereafter shall omit, neglect, or refuse to present such proper clergyman as aforesaid to

lord of the manor, shall neglect for six months to

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the survivors and survivor of them, and the heirs and assigns of such survivor, with the consent of the curate for the time being of the said chapel, shall think proper; *And* do and shall pay the rents and profits arising from the said pews and seats, to the curate for the time being of the said chapel, for his maintenance and support; *And* as to the said piece or parcel of land, and all other the hereditaments hereby firstly granted and released, or intended so to be, and their appurtenances, save and except the said chapel, *Upon trust* that they the said several persons parties hereto of the sixth part, and the survivors and survivor of them, and the heirs and assigns of such survivor, do and shall permit and suffer the same at all times to be used as a burial ground to the said chapel, *And* subject thereto, do and shall permit and suffer the same to be held, occupied, and enjoyed by, or pay the rents, issues, and profits thereof to the curate for the time being of the said chapel, for his maintenance and support; AND as to the said closes or pieces or parcels of land and hereditaments hereby secondly granted and released, or intended so to be, and their appurtenances, *Upon trust*, that they the said several persons parties hereto of the sixth part, and the survivors and survivor of them, and the heirs and assigns of such survivor, do and shall either permit or suffer the same to be held, occupied, or enjoyed by, or pay the rents, issues, and profits thereof, to the said curate for the time being of the said chapel, for his maintenance and support: PROVIDED ALWAYS and it is hereby agreed, &c. that it shall be lawful for the said several persons parties hereto of the sixth part, and the survivors and survivor of them, and the heirs or assigns of such survivor, with the consent in writing of the curate for the time being of the said chapel, by any deed or writing to be by them or him sealed and delivered in the presence of and attested by two or more

and to pay the rents to the curate of the chapel;

and as to the adjoining land,

upon trust to permit it to be used as a burial ground, and subject thereto, by the curate;

and as to all the other lands, upon trust to permit the curate to occupy it, or receive the rents for his own use.

Power to the trustees to let the premises for ten years at rack rent.

the said chapel, for the space of three calendar months next after the same shall become vacant, *Then*, and in every or any such case, and so often as the same shall happen, it shall and may be lawful for the vicar of aforesaid, for the time being, to present a proper clergyman or minister thereto accordingly; AND IT IS HEREBY

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

make such appointment as the trustees shall appoint;

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credible witnesses, to demise or lease the said piece or parcel of land and hereditaments intended for a burial ground, as hereinbefore is mentioned, and their appurtenances, *And* also the said closes or pieces or parcels of land and hereditaments hereby secondly granted and released, or intended so to be, and their appurtenances, or any of them, or any part thereof respectively, for any term of years not exceeding ten years, to be computed from the making thereof, at the best yearly rent that can be obtained for the same, without taking any fine or foregift for the making thereof, but so that there be contained therein a covenant for payment of the rent thereby reserved, and a condition of re-entry for nonpayment of the same rent, and so that the lessee or lessees do execute a counterpart of such lease: PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties hereto, that when and so often as the said chapel and burial ground, and the fence surrounding the same, or any part thereof respectively, shall be out of repair and condition, the said several persons, parties hereto of the sixth part, and the survivors and survivor of them, and the heirs and assigns of such survivor, shall cause the same to be repaired without delay, and the expenses attending the repairs, or so much of the said expenses as shall not be defrayed by subscriptions or other means, shall be defrayed out of the funds provided by these presents for the maintenance and support of the curate for the time being of the said chapel; *And* the said several persons, parties hereto of the sixth part, and the survivor and survivors of them, and the heirs and assigns of such survivor, shall apply a competent part of such funds to that purpose accordingly: PROVIDED ALWAYS, and it is hereby further agreed and de-

Power to the trustees, out of the rents of the trust premises, to raise and pay all expenses of repairs, &c.

Proviso that the curate of the chapel shall always be ap-

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

and to allow free seats to be left for the inhabitants;

and to let and dispose of the other seats;

AGREED AND DECLARED between and by the said parties hereto, that the said trustees or trustee for the time being of these presents, shall allow at the least free seats in the said chapel, for the inhabitants of the said village of , and the adjacent places in the said parishes of and , for ever hereafter; *And* that, subject to the allowance of such free seats as aforesaid, the said trustees or trustee for the time being of these presents, do and shall in all respects, at their or his dis-

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pointed by the trustees.

clared between and by the said parties hereto, that the curate of the said chapel shall at all times be nominated and appointed by the said several persons, parties hereto of the sixth part, and the survivors and survivor of them, and the heirs or assigns of such survivor, by some deed, sealed and delivered by them or him, in the presence of, and attested by two or more credible witnesses: PROVIDED NEVERTHELESS, that no curate who shall be so nominated and appointed, shall be qualified to do duty at the said chapel, or entitled to the provision made for him by these presents, till he shall have been licensed by the ordinary: AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by the said parties hereto, that when and so often as the curacy of the said chapel shall become vacant by death, resignation, deprivation, or otherwise, the vacancy shall be filled up within six calendar months after the same shall have occurred: PROVIDED ALWAYS, and it is hereby further agreed, &c. that if the said trustees hereby appointed, or to be appointed, as hereinafter is mentioned, or any of them, or their or any of their heirs, shall happen to die, &c. it shall be lawful for the then surviving or continuing trustees, &c. by deed, &c. to nominate and appoint any other person or persons, being an inhabitant or inhabitants of the said hamlet of , and a member or members of the church of England, to be a trustee or trustees, in the stead or place of the trustee or trustees so dying, &c.; *And* when, &c. the said trust estates and premises shall be conveyed, &c. *And* that every person who shall be appointed as aforesaid shall have all the powers and authorities of the trustee in whose room he

Power to change the trustees, and appoint new ones,

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

cretion, sell, let, and manage the pews and sittings in the said chapel, to the inhabitants of the said village of , and the adjacent places in the parishes of and aforesaid, in such manner, and for such prices, as they or he shall think fit, and do and shall stand possessed of the monies to arise from the lettings of the said pews and sittings in the said chapel, *Upon trust,* by and out of the same to pay and discharge all and whatsoever monies which may be due or become due in respect of the completing and

at the discretion of the trustees; and to stand possessed of the money arising thereby, Upon trust to

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shall be substituted: PROVIDED ALWAYS, and it hereby further agreed, &c. that although for the convenience of the trustees, full power is given to them to nominate and appoint a new trustee whenever any of them shall happen to die, or be desirous of being discharged from, or decline, or become incapable to act in the trusts of these presents, yet it shall and may be discretionary in them to exercise such power till the number of them shall be reduced to eight; but whenever the number shall be reduced to eight, *Then* and so often the exercise of the power shall no longer be discretionary, but the surviving or continuing trustees shall forthwith exercise the said power, and all such acts and deeds as shall be necessary to complete the exercise or execution of the same, according to the true intent and meaning thereof, shall be forthwith done and executed: PROVIDED ALWAYS, and it hereby further agreed, &c. that the clerk of the said chapel shall, at all times, be appointed by the curate thereof for the time being; *But* that in all other respects, the said chapel and other trust premises shall be under the direction, management, and control of the trustees for the time being of these presents, who shall be present at any meeting held in the said chapel, which shall have been previously called by notice in writing, which notice shall specify the day and hour when, and also the purpose for which the said meeting shall be held, and shall be signed by not less than two of the trustees, and shall be affixed to the principal door of the said chapel for at least fourteen days immediately preceding the day of holding such meeting, and shall be read once in the said chapel during the time of divine service, either

The power to appoint new trustees must be exercised when the continuing trustees are reduced in number to eight.

The clerk of the chapel to be appointed by the curate; but in other respects the management is vested in the trustees.

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

building of the said chapel, including the monies which have been so advanced and lent for that purpose as hereinbefore is mentioned, with interest for the same after the rate aforesaid, to be computed from the time or respective times of advancing and paying the same, and also in building or completing pews in the said chapel, and in repairing and keeping in repair the said chapel, and in purchasing surplices, books, and other things, necessary for the said chapel, in such manner as the said trustees or trustee

pay the expenses of building, &c.

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by the curate or clerk thereof, on each of the two Sundays immediately preceding the day of meeting: PROVIDED NEVERTHELESS, that not less than seven trustees shall be present to constitute a meeting; AND it is hereby further agreed and declared, that all questions agitated at any of the said meetings, upon which all the trustees present shall not happen to agree, shall be decided by a majority of the votes of the said trustees; *And further*, that if, upon any question agitated at any of the said meetings, the votes of the trustees present shall happen to be equal, *Then* and in every such case the question in dispute shall be decided by the vicar of for the time being, whose decision shall be binding and conclusive on all the dissenting trustees, and on all the absent trustees (if any); *And* all the trustees for the time being of these presents shall do and execute all such acts and deeds as shall be necessary and proper for giving effect to such resolutions and determinations: PROVIDED ALWAYS, and it is hereby expressly agreed, &c. that if after the election of any curate or trustee, by all the trustees present at any such meeting as aforesaid, the deed hereinbefore required for the nomination or appointment of such curate or trustee shall be executed by all the said trustees present at any such meeting, such nomination and appointment shall be as valid and effectual, to all intents and purposes whatsoever, as the same would have been if the said deed had been executed by all the trustees for time being; *And* that if after the election of any curate or trustee by the majority of the trustees present at any such meeting as aforesaid, the deed hereinbefore required for the nomination and ap-

That in case of difference, all questions shall be decided by a majority of the trustees;

or, when they are equal, by the casting vote of the vicar of ——.

Provision for making deeds of appointment, signed by the trustees whose votes decide any disputes, as valid as if all the trustees had signed such deeds.

for the time being of the said chapel, shall in their or his discretion think fit; *And* subject thereto, do and shall pay and apply all the surplus of the said monies (if any), unto the minister, clerk, or other officers of the said chapel, or any of them, in such proportions as the said trustees or trustee for the time being shall think proper; PROVIDED NEVERTHELESS, and it is hereby agreed and declared between and by the said parties hereto, that it shall and may be lawful for the trustees or trustee of these presents, by and out of the rents and monies arising from the sale or letting of the said pews and seats from time to time, to accumulate and set apart a sum of money not exceeding pounds, for the purpose of providing a fund for the repairs of the said chapel, or for the paying off and discharging any monies which may be due as aforesaid, in respect of the erecting and building the same, such monies from time to time to be invested by the said trustees or trustee in their or his names or name in government funds or parliamentary securities: AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the said persons parties hereto of the third part, their executors, adminis-

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

and the residue to the minister and officers of the chapel, at the discretion of the trustees;

Provision for accumulating a fund for the payment of expenses.

Declaration of trust of the sum of —*l.* 3-per cents. trans-

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pointment of such curate or trustees, shall be executed by such of the trustees present at any such meeting as voted for such curate or trustee, such nomination and appointment shall be as valid and effectual, to all intents and purposes whatsoever, as the same would have been if the deed had been executed by all the trustees for the time being; *And* that if after the election of any curate or trustee by one half of the trustees present at any such meeting as aforesaid, and by the vicar of for the time being, the deed hereinbefore required for the nomination and appointment of the curate or trustee so elected, shall be executed by such of the trustees present at the said meeting as voted for such curate or trustee, and by the said vicar of , such nomination and appointment shall be as valid and effectual, to all intents and purposes whatsoever, as the same would have been if the deed had been executed by all the trustees for the time being." (*Clause for the indemnity of the trustees.*)

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

trators, and assigns, shall stand and be possessed of and interested in the said sum of pounds, three pounds per cent. consolidated bank annuities (*d*), so transferred into their names as hereinbefore is mentioned and recited, *Upon trust*, to pay the dividends and annual produce thereof unto the minister for the time being officiating in the said chapel, such payments to be made half-yearly, and as the said dividends shall become payable: AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by the said parties hereto, that the trustees or trustee for the time being of these presents, may with the consent of (*e*) , make such orders and regulations for the performance of the duties of the said chapel by the ministers and other officers thereof, and make all such regulations for the management thereof, as to them shall seem necessary and proper, so as such orders and regulations are not inconsistent with the trusts, intents, and purposes hereby declared; PROVIDED ALWAYS, and it is hereby agreed and declared, that if the trustees hereby appointed, or any future trustees to be appointed in the place or stead of them, or any of them, as hereinafter is mentioned, shall happen to die, or

ferred by the lord of the manor to the trustees, for the support of the minister of the chapel.

Clause in regard to the management of the chapel.

Provision for changing and appointing new trustees.

Deeds of endowment of chapels likely to be less frequent in future, in consequence of the late acts for building new churches.

(*d*) Deeds of endowment of chapels will probably in future be much less frequent than formerly, as the legislature has lately made ample provision for the building of such additional places for public worship, according to the views and forms of the Church of England, as the increase in the population of the country may require. See the 58 Geo. III. c. 45; 59 Geo. III. c. 134; 3 Geo. IV. c. 72; 5 Geo. IV. c. 103; and 7 & 8 Geo. IV. c. 72. The last act declares, that when any person shall, to the satisfaction of the commissioners, endow any chapel built or to be built by such person, with some permanent provision in land or monies in the funds, exclusively or in addition to the pew rents or other profits arising from the chapel, it shall be lawful for the commissioners to declare the right of nominating a minister to the chapel to be for ever thereafter in the person or persons building and endowing the chapel, his or her heirs or assigns, or in his or her appointee. A provision which is likely, in some instances, to promote the building of churches from other than religious considerations; as the perpetual right of nominating a person to an income, and a respectable station in society, is in these times a very valuable and *saleable* property.

(*e*) The draft is left in blank in this place. The consent of the bishop, or vicar, or both, was probably intended.

CONVEYANCE OF A CHAPEL TO BE CONSECRATED, AND ENDOWMENT OF IT.

be desirous of being discharged of and from, or refuse, decline, or be incapable to act in the trusts hereby in them reposed as aforesaid, *Then*, and in such case, and when and so often as the same shall happen, it shall and may be lawful to and for the said [*lord of the manor*] during his life, and after his decease, to and for the surviving or continuing trustees or trustee for the time being of these presents, or if there shall be no surviving or continuing trustee, then to and for the executors or administrators of the last surviving or continuing trustee, by any writing under his or their hand or hands, to appoint one or more person or persons to be a trustee or trustees in the room of the trustee or trustees so dying, or refusing, or becoming incapable to act therein as aforesaid; *And* thereupon the said trust estates and premises shall be conveyed to and vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustees, or solely, as occasion shall require, upon the trusts aforesaid; *And* every such new trustee shall have such and the same powers and authorities and discretion, to all intents and purposes whatsoever, as if he had been originally appointed a trustee in and by these presents; (*Usual clause for the indemnity of trustees*). IN WITNESS, &c. (*f*).

(*f*) This precedent is understood to have been settled by a conveyancer of considerable practice; and the reservation to the grantor of the right of nominating the clergyman, may have been thought not to be "a right for the grantor's *benefit*," within the meaning of the mortmain act. To avoid all doubt, a different reservation, in a like case, is to be recommended.

CONVEYANCE OF A CHAPEL FOR THE USE OF A SOCIETY OF DISSENTERS.

CONVEYANCE *by Bargain and Sale of a Messuage or Tenement, to be used as a* MEETING-HOUSE *for Public Religious Worship, by a Congregation of Protestant* DISSENTERS (*a*).

Parties.

THIS INDENTURE, made, &c. BETWEEN [*donor*] of, &c. of the one part, and [*trustees*], of the other part; WITNESSETH, that for promoting the Christian religion as professed by Protestant Dissenters of the denomination of , at , and for enabling the professors of the same religion, of the denomination aforesaid, more conveniently to exercise the forms of their religious worship and other ordinances of their persuasion, at aforesaid; *And* also in consideration of five shillings, &c. (*b*), HE the said [*donor*] *Hath* given, granted, bargained, and sold (*c*), *And* by these presents, *Doth* give, grant,

Witnessing part.

For promoting the Christian religion as professed by the dissenters, called ——, the donor bargains and sells to the trustees,

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(*a*) This Precedent was prepared by Mr. Preston, at the request of the Deputies appointed to protect the civil rights of the protestant dissenters, and was at the time, (1811 or 1812), in general circulation:—many copies having been printed for the use of the dissenters of the several denominations of Presbyterians, Independents, and Baptists.

(*b*) No other consideration should be introduced, except when there is a purchase of land; then the consideration should be expressed, and the purchasers should in all cases be directing parties.—*Note by Mr. Preston.*

(*c*) It is very common to make conveyances of this description by bargain and sale, and thereby save the expense of a lease for a year; for the conveyance must be enrolled, in compliance with the requirements of the mortmain act, 9 Geo. II. c. 36, within six calendar months from the date of the deed; and the same enrollment, if made within six *lunar* months from the date of the deed, will also be a compliance with the provisions of the act of enrollments of bargains and sales, 27 Hen. VIII. c. 16.

bargain, and sell unto the said [*trustees*] (*d*), and all other persons (if any), parties hereto of the second part, their heirs and assigns, ALL THAT messuage or tenement, or meeting house, &c. (*parcels*), *And* all the estate, &c.; To HAVE AND TO HOLD the said messuage or tenement, or meeting house, and hereditaments hereby bargained and sold (*e*), with their appurtenances, unto and to the use of

CONVEYANCE OF A CHAPEL FOR THE USE OF A SOCIETY OF DISSENTERS

Parcels.

Habendum in fee, upon the trusts after mentioned, *viz.*

(*d*) These words, "and all other persons (if any) parties hereto of the second part," are inserted to guard against the accidental omission of one of many names.—*Note by Mr. Preston.*

(*e*) Freeholds and leaseholds may be comprised in the same deed, and even in the same clause of grant; but there should be two clauses of habendum, one for the freehold, the other for the leasehold; and all the estate of the grantor must pass; no estate, rent, or benefit, by way of condition or otherwise, may be reserved; see 9 Geo. II. c. 36.

As to freeholds and leaseholds.

When there are leaseholds, let the habendum be to the trustees, their executors, administrators, and assigns, for and during the residue of a certain term of years which the said [*donor*] hath therein, being a term which was created by indenture, bearing date on or about the day of , and made between , of the one part, and , of the other part; at the yearly rent of pounds, and to be computed from the day of .

When there are copyholds, add, "AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations hereinbefore expressed, the said [*donor*] did, on the day of the date of these presents, being a surrender in effect, but an indenture in form, prepared for the purpose of complying with the provisions of the act of parliament made in that behalf, personally go before , steward of the manor of in the county of , and did, out of court, by the rod, surrender out of his hands, into the hands of the lord of the said manor, by the hands and acceptance of the said steward, according to the custom of the same manor, ALL, &c., *To the use* and behoof of the said [*trustees*], and all other persons (if any) parties hereto of the second part, their heirs and assigns for ever; *Nevertheless* to be held by them upon the trusts, and for the ends, intents, and purposes, hereinafter expressed, declared, and contained of and concerning the same."—*Note by Mr. Preston.* There seems to be some error in this last testatum clause, as it is more like a *recital* than an *operative part.*

As to copyholds.

The proper mode seems to be, to surrender the copyholds to such uses as the surrenderee shall by deed appoint; and then for him by *deed* to appoint the copyholds to the trustees for the charitable purposes intended. See the Introductory Observations to this title.

CONVEYANCE OF A CHAPEL FOR THE USE OF A SOCIETY OF DISSENTERS.

the said [*trustees*], and all other persons (if any), parties hereto of the second part, their heirs and assigns for ever; upon the trusts, and for the ends, intents, and purposes hereinafter expressed, declared, and contained, of and concerning the same (*f*); AND IT IS HEREBY AGREED AND DECLARED, that the said hereditaments so bargained and sold as aforesaid, are respectively bargained and sold upon the trusts hereinafter declared, (that is to say); *Upon* trust, that they the trustees or trustee for the time being, shall from time to time, and at all times hereafter (*g*), permit and suffer the said messuage or tenement, or meeting house, to be used, occupied, and enjoyed, as a place of

Upon trust to permit the meeting-house to be used for the purpose of public religious worship by the dissenters at —— of the denomination of ——.

(*f*) There appears to be no occasion for the repeated declaration contained in the next twenty-seven words.

Another form.

(*g*) Forms frequently required are the following:—"Permit and suffer a meeting house, vestry room, or other offices, to be built upon the said piece of ground, and to be used, occupied, and enjoyed, as and for a place of public religious worship, &c.; such meeting house and other erections to be built at the expense of such members of the said society of protestant dissenters, and such other persons as shall think fit to subscribe to the same, and according to such plan as the said society, or the trustees thereof, shall adopt for that purpose."

Trust for a burial ground.

"Permit and suffer the said piece of ground to be from time to time, and at all times hereafter, used as a burial place for the interment of deceased members of the said society of protestant dissenters and others, according to the regulations to be prescribed by the majority of the men members for the time being of the society attending the said meeting house, being subscribers thereto and communicants therein, and being present at a church meeting to be convened for that purpose."

Trust for an academy.

"Permit and suffer the said messuage or tenement and hereditaments hereby bargained and sold, to be used, occupied, and enjoyed, as and for an academy, or school, or place of classical and religious instruction for young men devoted to the ministry among protestant dissenters, or otherwise, in such manner, and under such regulations, and with full power to alter and vary such regulations, as the major part of the trustees for the time being, together with the major part of the men subscribers for the time being to such academy who shall have been subscribers thereto for twelve preceding calendar months, shall, at any public meeting to be convened for such purpose, and held after a week's previous notice thereof, from time to time order and direct."—*Note by Mr. Preston.*

CONVEYANCE OF A CHAPEL FOR THE USE OF A SOCIETY OF DISSENTERS.

public religious worship for the service of God, by the society of Protestant dissenters of the denomination called ; *And* also by such other persons as shall hereafter be united to the said society, and attend the worship of God in the said meeting house; *And* also at all times for ever hereafter, permit the said room called the vestry room, to be used with and be appendant to the said meeting house, as a vestry room; *And* the said piece of ground, called the burial ground, to be used with and be appendant to the said meeting house as a burial ground; *And* the said to be used and inhabited by the officiating minister for the time being, for his residence, or otherwise to be let, as the major part of the men subscribers to the said meeting, being members thereof and communicants therein, shall at a meeting duly held for that purpose declare; *And* permit and suffer such person or persons as shall be nominated by the men subscribers for the time being to the said meeting house, or the major part of them, being members of the said society and communicants therein, at any meeting for that purpose duly assembled, to receive (*h*) and take all such voluntary subscriptions and other sums of money, as shall from time to time be paid or subscribed by any person or persons whomsoever, towards the support of the public worship of God in the said meeting house, and for defraying the expenses and charges attending the same, or as shall be contributed for the benefit or support of the minister for the time being officiating therein; *And* shall permit and suffer to officiate in the said meeting house, such person or persons, of the denomination of Protestant dissenters called , as the said subscribers, or the major part of them, men or women, being members of the said society and communicants therein, at a meeting duly assembled for that pur-

the vestry room to be used as such;

the adjoining land to be used as a burial ground;

and the adjoining dwelling house to be occupied by the minister;

Also upon trust to permit the nominee of the men-members of the meeting, to receive subscriptions;

and also permit the minister appointed by the men and women, members of the meeting, to preach in the meeting-house, and otherwise

(*h*) This clause is commonly inserted in deeds of this kind; but the propriety of its insertion may be questioned. The donor has nothing to do with the receipt of the voluntary subscriptions of other persons, nor have the trustees, nor do such subscriptions relate to the trust premises further than the *subscribers* may direct. The society will, of course, have its collector or treasurer, but the trust deed need not provide for it.

CONVEYANCE OF A CHAPEL FOR THE USE OF A SOCIETY OF DISSENTERS.

pose, shall from time to time elect, to officiate as their minister or pastor in the said meeting house, according to the usual order and customs of societies of Protestant dissenters of the denomination aforesaid; *And upon this further trust*, that the said trustees or trustee for the time being, shall at any time or times, when thereto requested by the major part in number of the men subscribers for the time being, members of the said society and communicants therein, and who shall be attending at a meeting duly assembled for that purpose, raise such sum or sums of money as shall be directed by the men members present at such meeting, or the major part of them, by a mortgage of all or any part of the said trust estates, and make any conveyance thereof for that purpose; *And* also, when thereunto required by the major part in number of such men subscribers, being members and communicants as aforesaid attending at a meeting duly assembled for that purpose, absolutely make sale of the said trust estates, or any part thereof, and the fee simple and inheritance thereof, either by public auction or private contract, and in such manner as such men subscribers, being members and communicants as aforesaid, or the major part of them for the time being attending such meeting, shall think fit, and convey the same trust estates, when sold, to the person or persons who shall agree to become the purchaser or purchasers thereof; *And* also shall at any time or times, at such request as aforesaid, convey the said trust estates, or any part thereof, to any person or persons, in exchange for or in lieu of any other hereditaments, to be situate within miles of aforesaid, as to the said trustees or trustee for the time being, with the consent of such men subscribers, being members and communicants as aforesaid, or the major part of them, present at any meeting convened for that purpose, shall appear more convenient for the purposes aforesaid, or any of them; *And upon this further trust* (*i*), that the said trustees or trustee for the

officiate therein as such minister;

and upon further trust, at the request of the men members of the meeting, to raise money by a mortgage of the premises;

or sell the trust premises,

or exchange the same for other premises.

Declaration of trust of the lands which shall be received in exchange.

(*i*) It is very common, and perhaps more correct, to introduce this and the two following trusts, as declarations; and instead of the words "*And* upon this further trust," to say, "*And* it is hereby agreed and declared." See the next precedent.

CONVEYANCE OF A CHAPEL FOR THE USE OF A SOCIETY OF DISSENTERS.

time being, shall stand and be seised of the hereditaments (if any), which shall be taken in exchange as aforesaid, upon the same or the like trusts, and to and for the same or the like ends, intents, and purposes, as are hereinbefore expressed and declared concerning the hereditaments hereby bargained and sold, or as near thereto as may be, and the nature of the hereditaments to be so taken in exchange, and the purposes of convenience for which they shall be taken in exchange, will admit; *And upon this further trust*, that the said trustees or trustee for the time being, shall stand possessed of the money, which from time to time shall be received on any sale, mortgage, or exchange, which shall be made under the trusts hereinbefore declared, *Upon trust*, to invest, lay out, or dispose of the same, in such manner, and for such purposes, for the benefit of the said society of Protestant dissenters, of the denomination aforesaid, or for the trust property, or the enlargement, repair, or rebuilding of the trust premises, or any of them, or otherwise, as the major part in number of the men subscribers, being members of the said society and communicants therein as aforesaid, and present at a meeting to be called for that purpose, shall direct; *And upon this further trust*, that in case the said society shall be totally dissolved or dispersed, and the public worship of God in the said meeting house, discontinued for the space of two years together, then the said trustee or trustees for the time being, shall convey and assure the said trust estates hereby bargained and sold, and also the hereditaments to be received in exchange as aforesaid, unto such person or persons, in such manner, and for such purposes, or religious or civil, as two-thirds in number of those men members of the said society of Protestant dissenters, who at the time of such dissolution or dispersion, shall be, and for one year then next preceding, shall have been, subscribers to the support of the public worship of God in the said meeting house, and during the like period shall have been members of the said congregation, and communicants therein, shall appoint by any writing under their hands; *And* the said [*donor*] *Doth* hereby direct, and the other parties hereto *Do* hereby agree, that the person or persons who shall become the purchaser or purchasers, or take a

Declaration of trust of the monies which shall be received on any mortgage, sale, or exchange.

Declaration of trust of the trust premises, in case the society shall be dispersed or dissolved, so as not to want the meeting-house as a place for worship.

Clause for making the trustees' receipts sufficient discharges.

CONVEYANCE OF A CHAPEL FOR THE USE OF A SOCIETY OF DISSENTERS.

mortgage or mortgages of all or any part of the said trust estates, his, her, or their heirs, executors, or administrators, shall not be obliged to see to the application of the money to be advanced or paid by him, her, or them respectively, as the consideration of such purchase or purchases, mortgage or mortgages, nor be answerable or accountable for the misapplication or nonapplication of the same money, or any part thereof, after the same shall have been paid to, or to the order of, the said trustees or trustee for the time being, under these presents; *And* that every receipt which shall be given by the said trustees or trustee for the time being, for such purchase or mortgage money, shall be a sufficient discharge for the money therein respectively acknowledged to have been received; *And* that every sale or mortgage which shall be made, and contract for sale which shall be entered into, and conveyance which shall be executed, by the said trustees or trustee for the time being, pursuant to the trusts hereinbefore declared, shall be binding and conclusive on all persons claiming any benefit or interest under the trusts hereinbefore contained;

Provision for changing and appointing new trustees.

PROVIDED FURTHER, and it is hereby declared, that when and so often as, or at any time after, there shall be only five acting trustees of the said trust estates, the vacancy in the number of trustees shall be supplied by the appointment of so many additional persons, being Protestant dissenters by profession, as will make up the number of thirteen (*k*) trustees; such appointment to be made by the major part of the men subscribers to the said meeting house, being members and communicants therein as aforesaid, who shall be present at a meeting convened for that purpose, and with the consent and approbation of the surviving and continuing trustees or trustee; *And* that all such conveyances shall be made and executed, (at the expense of the trust estate, or the funds of the congregation attending the said meeting-house), as shall be necessary or deemed advisable for vesting the said trust estate in the then acting trustees or trustee, jointly with such additional trustees; *And* (*l*) that of every

Provision in regard to calling meetings of the

(*k*) The number originally appointed.

(*l*) These stipulations should have been introduced as a separate proviso, by the words "PROVIDED ALWAYS," &c.

meeting for the purposes aforesaid, there shall be public notice given on the Sunday preceding, during the time of divine service; *And* that the meeting shall not be held earlier than the Wednesday succeeding such Sunday, and that no person shall be entitled to vote on any of the matters aforesaid, unless such person shall have been a subscriber to, and a member of the said society, and a communicant therein, twelve calendar months prior to such meeting; *And* that the trustees or trustee for the time being shall be entitled to deduct and retain all the costs, charges, and expenses of and attending the execution of the trusts reposed, or to be reposed in them or him, under or by virtue of these presents. IN WITNESS, &c.

CONVEYANCE OF A CHAPEL FOR THE USE OF A SOCIETY OF DISSENTERS.

members of the society, for the purpose of ordering mortgages, &c.

Power to the trustees to retain their expenses.

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

DEED *of* TRUST *of a* MEETING HOUSE, *with a* BURIAL *Ground adjoining, for the Benefit of the* DISSENTERS *of the Denomination of* [ ], *at* : *The Management of the Trust-Premises being vested in the* MEN-MEMBERS *of the Society.* (*With Variations for the Management being vested in the* SEAT-HOLDERS) (*a*).

THIS INDENTURE, made the day of , BETWEEN [*assignor*] of, &c. of the first part; [*donor*] of, &c. of the second part; and [*eleven trustees*], of the third part: WHEREAS by an indenture of lease bearing date, &c. (*Recite lease of a piece of land from* [A. B.] *to assignor, as ante*, p. 411); AND WHEREAS, by a memorandum in writing, bearing date, &c. and signed, &c. the said

Parties.

Recites a lease, an agreement for sale, and the erection of a meeting-house on the land;

(*a*) The points which should be particularly attended to in preparing deeds of this description, and the several requirements of the mortmain act in regard to the execution and enrolment of such deeds, are stated in the Introductory Observations to this title, and the last precedent, to which the reader can, when necessary, refer.

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

[*assignor*] contracted and agreed with the said [*donor*], &c. (*Recite contract for the purchase of the lease, as ante*, p. 411); And whereas the said piece of land so agreed to be purchased by the said [*donor*] as aforesaid, was purchased by him for the purpose of erecting thereon a meeting-house or place of public religious worship, for the use of the Protestant Dissenters of the sect or denomination of Christians called [ ], resident in and near aforesaid, and for promoting the Christian religion according to the doctrines and tenets of the same sect or denomination; And whereas, since the said contract was entered into, a messuage or tenement, or meeting-house, with suitable vestry-rooms and vault thereto, have been erected and built on part of the said piece of land therein and hereinbefore mentioned, and the expenses of erecting and building the same have been paid in part out of a fund called "The Fund," and in other part out of different sums of money subscribed and collected for that purpose; And whereas the said [*donor*] hath agreed to pay the aforesaid purchase money or sum of pounds out of his own proper monies, and to direct the said [*assignors*] to assign the said piece of land so purchased by him as aforesaid, and the said meeting-house, vestry-rooms, and vault, since erected and built thereon, unto the said [*trustees*], their executors, administrators, and assigns, for the residue of the said term of years, upon the trusts hereinafter declared concerning the same (*b*); Now this

and the agreement to assign it to the trustees, upon the trusts aftermentioned.

Witnessing part.

(*b*) Sometimes it is recited, that several persons (named as parties of the second part), have collected and subscribed divers sums of money for the purpose of procuring a convenient place of worship for the religious society in question; and that they have, out of such sums, purchased the ground and erected a chapel on it; and that, at a meeting of the subscribers it was agreed, that the purchased premises and chapel should be conveyed to certain specified persons (the parties of the third part), upon the trusts after mentioned. See *ante*, pages 402. 411, 412. In other cases the conveyance is made as a gift; and in these cases a recital to the following effect may be used:

"Whereas the said [A. B.] being charitably disposed to promote the preaching of the Gospel at

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of, &c. (*Assignment of the piece of land, with the messuage or tenement, or meeting-house, vestry-rooms, and vault, built thereon, unto the trustees, for the residue of the term, upon the trusts after mentioned, nearly as pages* 412 *and* 413 ;) (that is to say) (*c*) ; *Upon trust* that the said trustees or

Assignment from the assignor and donor to the trustees, of the piece of land and meeting-house,

aforesaid, by the preachers late in connection with the Reverend George Whitfield, deceased, called the Tabernacle Preachers, hath proposed and agreed freely to give and grant the freehold piece or parcel of ground and hereditaments hereinafter particularly mentioned and described, and their appurtenances, unto the said [*the trustees*], their heirs and assigns for ever, upon the several trusts, and to and for the several ends, intents, and purposes hereinafter mentioned, expressed, and declared of and concerning the same."

(*c*) The following trusts and provisions are taken from the deed establishing the National Scotch Church in London.

"UPON TRUST that the said several persons, parties hereto of the fourth part, and the survivors and survivor of them, and the heirs and assigns of such survivor, do and shall permit and suffer to be erected and built upon the said piece or parcel of land or ground hereby granted and released, or intended so to be, or some part thereof, a church or chapel, or tenement to be used as a church or chapel, with a session house or vestry room, school rooms, and other suitable outbuildings thereto, according to such plan or design, and by or under the directions of such person or persons as the said committee for building the said church or chapel, or the major part of them, shall order or direct; *And* do and shall permit and suffer to be built, made, and formed in and under the said piece and parcel of land or ground hereby granted and released, or intended so to be, or the said church or chapel so to be erected and built thereon as aforesaid, such vaults or tombs for the burial of the dead, as the same committee, or the major part of them, shall order or direct; *And* do and shall permit and suffer to be built and set up, in or upon the same piece or parcel of land or ground, such walls, rails, gates, and fences as the same committee, or the major part of them, shall order or direct; *And* do and shall, from time to time, and at all times after the said church or chapel shall be so erected and built as aforesaid, permit and suffer the said church or

Trusts for erecting a church or chapel;

for building vaults under the same;

for permitting the chapel to be used as a place of public worship.

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

Upon trust to permit the meeting-house to be used as a place of public worship;

trustee for the time being do and shall from time to time, and at all times hereafter, permit the said meeting-house to be used, occupied, and enjoyed as a place for the public religious worship and service of God by the Society of Protestant Disenters at aforesaid, belonging to the denomination called " ," and by such other persons as shall hereafter be united to the said society, and attend the wor-

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chapel to be used, occupied, and enjoyed as a place for the public religious worship and service of God, according to the doctrine, forms of worship, and mode of discipline of the established church of Scotland, by the congregation of persons now or usually attendant on the ministry, or under the pastoral care or charge of the said [ ], and such other persons as shall hereafter join the said congregation; but under and subject to the orders, directions, and controul of the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinafter is mentioned, so as such orders and directions be not in opposition to, or inconsistent with the provisions hereinafter contained, or the general scope and true intent and meaning of these presents; *And* do and shall permit and suffer the said [ ], or other the person who shall for the time being be appointed minister of the said church or chapel as hereinafter is mentioned, to preach and expound the Holy Scriptures, dispense the sacraments, and otherwise officiate as minister in the said church or chapel, according to the doctrine, form of worship, and mode of discipline hereinbefore mentioned or referred to; *And* do and shall, during such time as from death or otherwise there shall be no minister of the said church or chapel, and also during such time as the minister for the time being of the said church or chapel shall, from indisposition or otherwise, be incapable of preaching and officiating as minister in the said church or chapel, permit and suffer such other person to preach and otherwise to officiate as minister in the said church or chapel, as from time to time shall be nominated for that purpose as hereinafter is mentioned; *And* do and shall permit and suffer the said session-house or vestry-room, so to be erected and built as aforesaid, to be used on the Sunday exclusively by the kirk session of the said church or chapel consisting of the minister, elders, and deacon for the time being of the said church or chapel as hereinafter is mentioned, and, on the other days of the week, for kirk session meetings, meetings of the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinafter is mentioned, and meetings of the seatholders for the time being of the said church or chapel, to be respectively convened as hereinafter is pro-

the session house to be used by the kirk session, for meetings of managers, &c.;

ship of God in the said meeting-house; *And* do and shall from time to time, and at all times hereafter, permit the said vestry-room to be used with, and be appendant to, the said meeting-house as a vestry-room, and occupied and enjoyed accordingly; *And* do and shall from time to time, and at all times hereafter, permit the said vault under the said meeting-house, and also such part of the said piece or

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

the vestry to be used as such;

and the vault under the meet-

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vided; and also for meetings of the members of any societies or institutions which may hereafter be formed, from amongst, or in connection with, the congregation attending the said church or chapel, either for the education or relief of the young or poor attending the said church or chapel, or for any other charitable or religious purpose or purposes whatsoever, at such time or times, and under such regulations as the said kirk session of the said church or chapel shall from time to time order or direct and appoint; *And* do and shall permit and suffer the said vaults or tombs, so to be built, made, and formed under the said church or chapel as aforesaid, to be used for the burial of deceased members of the congregation attending the said church or chapel, and their relations and friends, or other persons, upon such terms, and according to such rules and regulations, and subject to such restrictions and conditions, as shall from time to time be prescribed and appointed in that behalf by the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinafter is mentioned; *And* do and shall permit and suffer all out-buildings, which shall or may at any time hereafter be erected and built upon the said piece or parcel of land or ground hereby granted and released, or intended so to be, either for school rooms to the said church or chapel, or for any other purpose or purposes whatsoever, to be used, occupied, and enjoyed for the purpose or purposes for which the same shall be erected and built, but under and subject to the order, direction, and controul of the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinafter is mentioned; *And* also do and shall permit and suffer all such repairs, alterations, enlargements, improvements, and rebuildings to be from time to time made in, about, or upon the said church or chapel and trust premises, as the person in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinafter is mentioned, shall order or direct; AND UPON THIS FURTHER TRUST, that they the said trustees or trustee for the time being do and shall, at any time hereafter, at the request in writing of the said committee for building the said church or chapel, or the major part of them, levy and raise, by a mortgage of the said piece or par-

the vaults to be used for the burial of the dead;

and the out-buildings to be used for the purposes for which they are erected.

Trusts for raising, by way of mortgage, the sum necessary to discharge the costs of building;

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

parcel of land or ground hereby assigned, or intended so to be, as lies on the south side of the said vestry-room, to be used for the burial of the deceased members of the said society, and other deceased persons, according to such rules, upon such terms, and under such regulations, as shall from time to time be prescribed and approved of by the major part of the male members of the said society, present and

ing-house, and part of the adjoining land, to be used for burials;

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cel of land or ground, hereditaments and premises hereby granted and released, or intended so to be, and their appurtenances, and the said church or chapel, and other buildings to be erected and built thereon, as aforesaid, and the said vaults or tombs so to be built, made, and formed in or under the same, as hereinbefore is mentioned, or any of them, or any part thereof, all such sum or sums of money as the said committee, or the major part of them, shall, by any writing or writings under their hands order or direct to be raised for the purpose of paying and discharging the costs and expenses of erecting and building the said church or chapel, and other buildings so to be erected and built as aforesaid, and completing and finishing the same, or such part thereof (if any) as the monies subscribed and collected for that purpose shall be insufficient to pay and discharge; *And* do and shall pay the sum or sums of money which shall be so raised, or so much thereof as shall remain after deducting the costs and expenses of raising the same, into the banking-house of the bankers for the time being of the said committee, to be applied by the said committee for the purposes for which the same shall be raised; AND (subject and without prejudice to the trusts lastly hereinbefore declared and contained, and to any mortgage or mortgages which shall or may be made under or by virtue of the same) UPON THIS FURTHER TRUST, that they the said trustees or trustee for the time being do and shall, at any time hereafter, at the request in writing of the said committee for building the said church or chapel, or other the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested as hereinafter is mentioned, or the major part of them, levy and raise, by a mortgage of the said piece or parcel of land or ground, hereditaments and premises hereby granted and released, or intended so to be, and the said church or chapel to be erected and built thereon as aforesaid, and the said vaults and tombs so to be built, made and formed in or under the same, as hereinbefore is mentioned, or any of them, or any part thereof, all such sum or sums of money as the said committee, or such other persons as last aforesaid, or the major part of them, shall by any writing or writings under their hands order or direct to be raised for the purpose of paying and dis-

and (subject thereto) such other sums as the managers of the chapel shall direct.

qualified to vote at any such general meeting as hereinafter is mentioned; *And* do and shall permit such person of the denomination of Protestant Dissenters called " ," as the major part of the members (both male and female) of the said society, present at a meeting to be held for that purpose, shall from time to time elect and choose to be their minister or pastor, to preach and expound the holy

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

also to permit the minister to preach in the meeting-house.

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charging the costs and expenses of repairing, altering, enlarging, improving, or rebuilding the said church or chapel and other buildings so to be erected and built as aforesaid, or any part thereof, or of paying off and discharging any existing incumbrances on the said trust-hereditaments and premises, or any part thereof, or for paying any other sum or sums of money which shall become payable by the said committee, or such other persons as last aforesaid, under or by virtue of the declarations and agreements hereinafter contained; *And* do and shall pay and apply the sum or sums of money which shall from time to time be levied and raised under this present trust as aforesaid, or so much thereof as shall remain, after discharging the costs and expenses of raising the same, into the banking house of the bankers for the time being of the said committee, or of other the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinafter is mentioned, to be applied by the said committee, or such other person as last aforesaid, for the purpose for which the same shall be raised: AND UPON THIS FURTHER TRUST, that they the said trustees or trustee for the time being do and shall, at any time hereafter, at the request in writing of the said committee for building the said church or chapel, or other the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinafter is mentioned, or the major part of them, sell and dispose of the said vaults and tombs, so to be built, made, or formed in or under the said church or chapel as aforesaid, or any of them, to any person or persons who shall be desirous or willing to purchase the same, either for an estate in fee simple or for any term or terms of years, as the said committee, or such other persons as last aforesaid, or the major part of them, shall order or direct, and for such price or prices, or sum or sums of money, and upon such term or terms, or conditions, as the said committee, or such other persons as last aforesaid, or the major part of them, shall think proper, and order and direct; *And* do and shall pay the sum or sums of money which shall be received upon any such sale or disposition as aforesaid, or so much thereof as shall remain after discharging the costs and ex-

Trust for sale of the vaults under the chapel.

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

Scriptures, and otherwise officiate in the said meeting-house, according to the usual order and customs of societies of Protestant Dissenters of the denomination aforesaid; *And* when and so often as the person who shall be elected such minister or pastor as aforesaid, shall die, or be removed or displaced from his office by the major part of the members (both male and female) of the said society, present at

And when there is no regular minister, such other person as the deacons shall appoint;

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penses attending the same, into the banking-house of the bankers for the time being of the said committee, or of other the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinafter is mentioned, to be applied by the said committee or such other persons as last aforesaid, upon the trusts hereinafter declared concerning the same; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that for the purpose of effecting any such mortgages, sales, and other dispositions as aforesaid, it shall be lawful for the said trustee or trustees for the time being to make and execute all such demises, conveyances, and assurances of the said trust-hereditaments and premises, as they or he shall think necessary or proper; *And* that, in any mortgage or mortgages which shall be made or executed in pursuance of the trusts aforesaid, there shall be contained or inserted such power or powers of sale, and other powers and provisoes, agreements and declarations, as the persons at whose request such mortgage or mortgages shall be made, shall order or direct; *And* that no person or persons, to or with whom any mortgages, sales, or other dispositions shall be made by virtue of these presents, shall be obliged or be at liberty to enquire into the necessity or propriety of the same, or whether the same be or be not made at such request as is hereinbefore in that behalf mentioned; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the receipt or receipts, &c. (*usual receipt clause*): AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED between and by the parties hereto, that it shall be lawful for any one or more of the trustees for the time being of these presents, and also for any one or more of the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinafter is mentioned, either alone or in conjunction with any other person or persons whomsoever, to purchase all or any of the said vaults or tombs so to be built, made, and formed under the said church or chapel as aforesaid, notwithstanding he or they shall be such trustee or trustees, or vested with such management as hereinbefore mentioned, provided every such purchase be made with such consent as is hereinbefore ex-

Declaration that for effecting mortgages and sales, the trustees may execute conveyances, demises, &c.

Clause making trustee's receipts sufficient discharges.

Clause for enabling the trustees to purchase vaults, notwithstanding they are trustees.

DEED OF TRUST OF A DISSENTERS' MEETING HOUSE.

a meeting to be held for that purpose as hereinafter is mentioned, *Then* do and shall, until another person shall be duly appointed minister or pastor of the said society, permit such person or persons of the denomination aforesaid to preach in the said meeting-house, and otherwise officiate, according to such order and form as hereinbefore mentioned, as the deacons and elders for the time being of

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pressed, (that is to say); *If* the purchase for the time being made shall be prior to the opening of the said church or chapel, then with the consent of the major part of the persons who at the time of such purchase shall form or compose the congregation of which the said [ ] is now the minister or pastor, and be subscribers of one guinea or upwards, towards the said fund raised for building the said church or chapel, and who shall be present at a meeting to be convened for that purpose, in like manner as is hereinafter directed, in regard to the convening of a meeting for the election of a minister of the said church or chapel, in the event of decease of the said [ ], prior to the opening of the said church or chapel, or of his refusal to become the minister thereof; *But* if such purchase shall be made after the opening of the said church or chapel, *Then* with the consent of the major part of the seatholders of the said church or chapel, present and qualified to vote at any such general meeting, as hereinafter is mentioned: AND IT IS HEREBY AGREED AND DECLARED between and by the said parties to these presents, in manner following, (that is to say);

Declaration and agreement that the church or chapel shall be called the National Scotch Church.

THAT the said church or chapel so to be erected and built as aforesaid, shall be called "THE NATIONAL SCOTCH CHURCH," and shall be opened for Divine service with all convenient speed after the same shall be completed.

That [ ] shall be the minister of the said church, unless he dies or refuses.

THAT the said [ ] shall be the minister of the said church or chapel in case he shall be living when the same is completed, and shall be then willing to accept the office of minister thereof; *And* that he shall continue to be such minister during his life, or until he shall resign the said office of minister, or be removed therefrom in pursuance of the provisions hereinafter for that purpose contained.

That if [ ] shall die or refuse to become minister of the said church, another minister shall be elected by the congregation, at a meeting

THAT if the said [ ] should happen to depart this life previously to the completion of the building of the said church or chapel, or shall at the time of its completion refuse to become the minister thereof, *Then* and in either of the said cases, such other person shall be the minister of the said church or chapel as shall be nominated and appointed for that purpose, by the major part of the persons who, at the time of such decease or refusal, (as the case may be,) shall form or

DEED OF TRUST OF A DISSENTERS' MEETING HOUSE.

and also to permit such person as the society shall appoint to receive subscriptions, &c.

the said society, or the major part of them, shall appoint in that behalf; *And* do and shall permit such person or persons as shall from time to time be nominated for that purpose by the major part of the male members of the said society, present and qualified to vote at any such general meeting, as hereinafter is mentioned, to receive and take all such voluntary subscriptions and sums of money as shall

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convened for that purpose.

compose the congregation of which the said [ ] is now the minister or pastor, and be subscribers of one guinea or upwards for or towards the said fund raised for building the said church or chapel, and who shall be present at a meeting to be convened for that purpose, by notice from the precentor's desk in the said church, or other the church or chapel to which the said congregation may then have removed, or which they shall then use, such notice to be given fifteen days before the day of the said meeting, and to state the object of the meeting, and the time and place appointed for holding the same, and to be afterwards affixed on the principal doors of the said church or chapel in which such notice shall be given, and there to remain until the day of the said meeting.

That if [ ] resign the office of minister of the congregation before the chapel is finished, such resignation to be deemed a refusal to be minister of the chapel.

THAT if the said [ ] shall previously to the completion of the building of the said church or chapel, resign the office of minister of the congregation of which he has now the pastoral charge, such resignation shall be deemed and considered to be a refusal on his part to be the minister of the said church or chapel.

That when the minister of the chapel shall die, or resign, or be removed, the seatholders, present at a general meeting, shall elect another.

THAT when the said [ ], or the person who shall be appointed minister of the said church or chapel in his place or stead as aforesaid, or other the minister for the time being of the said church or chapel, to be appointed as hereinafter is mentioned, shall happen to die, or resign the said office of minister, or be removed therefrom in pursuance of the provisions hereinafter for that purpose contained, *Then* and in every such case, and so often as the same shall happen, such other person shall be called and elected to be the minister of the said church or chapel, as the major part of the seatholders of the said church or chapel, present and qualified to vote at any such general meeting, as hereinafter is mentioned, shall nominate and appoint.

That if a successor to the office of minister shall not be chosen within twelve months, the trustees shall appoint a successor to the office.

THAT in case a successor to the office of minister of the said church or chapel shall not be chosen in the manner hereinbefore directed within the space of twelve calendar months next after the death or resignation or removal of the minister so for the time being dying, resigning, or being removed as aforesaid, it shall be lawful for the trustees for the time being of these presents, or the major part of them, if more than

DEED OF TRUST OF A DISSENTERS' MEETING HOUSE.

from time to time be paid or subscribed by any person or persons whomsoever, towards the support of the public worship of God in the said meeting-house, and defraying the expenses and charges attending the same, or as shall be contributed for the benefit and support of the minister for the time being officiating therein; *And upon this further trust*, that the said trustees or trustee for the time

And upon further trust to raise money by

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two, by deed, under their hands and seals, to nominate and appoint a successor to the said office.

That no person shall be elected minister who is not licenced by some presbytery of the church of Scotland.

THAT no person shall at any time be called or elected to be the minister of the said church or chapel, who has not been previously licenced to preach the gospel by some presbytery of the established church of Scotland in Scotland.

That every person hereafter appointed minister, not previously ordained, shall be ordained by some Presbytery of the church of Scotland, in London, within six months after his election.

THAT every person who shall hereafter be appointed minister of the said church or chapel, shall, within six calendar months next after his election, procure himself to be ordained by some presbytery of the established church of Scotland in Scotland, unless he shall have been previously ordained by some such presbytery; and in case he shall neglect or refuse so to do, his election shall, at the expiration of such six calendar months, be null and void, and another election shall then be made.

(*Divers special provisions in regard to removing a minister, paying him a salary, and settling disputes with or complaints against him.*)

That when there is no minister, such person shall preach, &c. as the elders and deacons appoint.

THAT during such time as there shall be no minister of the said church or chapel, such person or persons, being so qualified as hereinafter is mentioned, shall preach and otherwise officiate as minister in the said church or chapel, as the elders and deacons for the time being of the said church or chapel, or the major part of them, shall from time to time nominate and appoint in that behalf.

That the elders and deacons of the present congregation, shall be the elders and deacons of the new chapel.

THAT the persons who shall at the time of the opening of the said church or chapel be the elders of the congregation, now under the pastoral care of the said [ ], shall be the elders of the said church or chapel; *And* the persons who shall be then the deacons of the said congregation, shall be the deacons of the said church or chapel.

That the future elders and deacons shall be elected as in Scotland.

THAT the future elders and deacons of the said church or chapel shall be respectively appointed according to the practice of the established church of Scotland, or as near thereto as circumstances will permit.

(*Special provisions in regard to removing elders and deacons*).

That the minister, elders, and deacons, shall be called the Kirk Session.

THAT the minister, elders, and deacons for the time being of the said church or chapel, shall be considered as one collective body, and shall be called (as in Scotland) "THE KIRK SESSION."

DEED OF TRUST OF A DISSENTERS' MEETING HOUSE.

way of mortgage, when so requested by the society.

being do and shall, at any time hereafter, when thereunto requested, levy and raise by a mortgage of all or any part of the said trust premises, such sum or sums of money as the major part of the male members of the said society, present and qualified to vote at any such general meeting, as hereinafter is mentioned, shall from time to time order or direct; *And* for that purpose do and shall make and

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That matters relating to the public worship, shall be left to the minister.

THAT all matters relating to the public worship of God in the said church or chapel, and the administration of such religious rites, ordinances, and services as shall be performed and observed therein, shall be left to the discretion of the minister for the time being of the said church or chapel, during such time as there shall be such a minister; and to the discretion of the elders and deacons for the time being of the said church or chapel, during such time as there shall not be such a minister; *But* so nevertheless that the sacrament of the Lord's Supper shall be administered in the said church or chapel twice in every year at the least, and that an interval of more than eight months be not at any time permitted between the celebrations or administrations thereof.

That the kirk session shall settle disputes as to communicants.

THAT all questions which shall arise touching or concerning the right or propriety of any person who shall attend the said church or chapel to communicate at the celebration of the sacrament of the Lord's Supper therein, shall be subject to the determination of the said kirk session, according to the rules of the established church of Scotland, whose decision shall be final and conclusive.

That the precentor shall be appointed by the minister.

THAT the precentor of the said church or chapel shall be appointed by, and be removeable at the pleasure of the kirk session; but the pew-openers, door-keepers, and other persons to be employed in or about the said church or chapel, shall be appointed by, and be removeable at the pleasure of, the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested as hereinafter is mentioned.

(*Clause as to their salaries or wages*).

That the management of the affairs of the chapel shall be vested in the persons after mentioned.

THAT the management of the affairs of the said church or chapel shall (except as is by these presents otherwise expressly provided) be vested in the persons hereinafter mentioned, (that is to say); until the expiration of six calendar months next after the said church or chapel shall have been opened for divine service as aforesaid, or the sum or sums of money which shall be raised by mortgage of the said trust hereditaments and premises, under or by virtue of the trust hereinbefore for that purpose firstly contained, shall be paid off and discharged

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

execute such assignments, demises, or assurances, as the persons at whose request such mortgage shall be made, shall direct and approve, and also give to, and vest in the mortgagee or mortgagees, such powers of sale and leasing, and other powers, as the same persons shall think expedient and proper; *And upon this further trust*, that the said trustees or trustee for the time being do and shall, if there-

And upon further trust to sell the premises at the like request.

(whichever shall last happen), in the persons who shall for the time being constitute or form the said committee for building the said church or chapel; *And* after the expiration of such six calendar months as aforesaid, or the sum or sums of money which shall be so raised by mortgage of the said trust hereditaments and premises, as last aforesaid, shall be paid off and discharged (whichever shall last happen), in the persons who shall for the time being be the deacons of the said church or chapel.

That the building committee shall consist of the parties of the third part, &c.

THAT the said committee for building the said church or chapel shall consist of the said several persons parties hereto of the third part, and the survivor and survivors of them, and of such other persons as may be appointed in their or any of their place or stead, as hereinafter is mentioned.

(*Special provisions for supplying vacancies in the committee*).

That if after the management is vested in the deacons, the number of deacons shall be less than five, the vacancy shall be supplied by the kirk session.

THAT if at any time after the management of the affairs of the said church or chapel shall become vested in the deacons for the time being of the said church or chapel, as hereinbefore is mentioned, the number of deacons of the said church or chapel shall be less than five, *Then* and in every such case, and when and so often as the same shall happen, so many additional persons shall be appointed deacons of the said church or chapel as will make up a number of not less than five deacons: such appointment to be made by the kirk session of the said church or chapel, according to the practice of the established church of Scotland, or as near thereto as circumstances will permit.

(*Clauses in regard to calling and holding meetings of the committee*).

That the deacons shall act under the controul of the seatholders.

THAT the deacons for the time being of the said church or chapel shall, in all matters relating to the management of the said church or chapel, be subject to the direction and control of the major part of the seatholders, present and qualified to vote at any such general meeting, as hereinafter is mentioned; *And* that all rules and regulations which shall be made and established for the guidance of the said deacons at any such general meeting, shall, whether the same be made before or after the appointment of the said deacons, continue in force until the same shall be altered or set aside at some other general meeting of seatholders.

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

unto requested by the major part of the male members of the said society present and qualified to vote at any such general meeting, as hereinafter is mentioned, absolutely sell and dispose of the said trust premises, or any part thereof, either by public auction or by private contract, for such price or prices, and in such manner, as the persons at whose request such sale shall be made shall think fit and

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(*Special provisions as to calling and holding meetings of deacons*).

That the pews and seats shall be allotted among such of the congregation as have subscribed towards the support of public worship in the same chapel, as the managers shall think proper.

THAT the pews and seats in the said church or chapel shall in the first instance be allotted unto and amongst the persons who shall at the time of the opening of the said church or chapel form or compose the congregation of which the said [ ] is now the minister or pastor, and who shall have respectively subscribed and paid some sum or sums of money for or towards the support of the public worship of God in the said church or chapel, and such other persons as may be then desirous of attending the worship of God in the same church or chapel, in such manner as the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested as hereinbefore is mentioned, or the major part of them, shall order or direct.

That seatholders shall hold and enjoy their seats until removal, as after mentioned, &c.

THAT the persons to whom the said pews or seats shall be so allotted as aforesaid, shall hold and enjoy the same until they shall be removed therefrom as hereinafter is mentioned, or shall die, or shall resign the same; *But* nevertheless upon such terms, and subject to such regulations as the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested as aforesaid, or the major part of them, shall order or direct.

That vacant seats shall be allotted as the managers shall direct.

THAT when and so often as, from the causes aforesaid, or any of them, or any other cause whatsoever, any of the pews or seats in the said church or chapel shall become vacant and without an occupier or holder, the same shall be allotted to such other person or persons attending or desirous of attending the worship of God in the said church or chapel, as the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested as aforesaid, or the major part of them, shall order or direct.

That the persons to whom they are allotted shall hold them as other seatholders.

THAT the persons to whom the said pews or seats shall be so allotted, under the provision lastly hereinbefore contained, shall respectively hold and enjoy the same in like manner, and upon the same terms, as if such pews or seats had been allotted to them under the provision firstly hereinbefore in that behalf contained.

That the per-

THAT the persons to whom the said pews or seats of the said church

proper; *And* do and shall assign the hereditaments and premises which shall be so sold unto the purchaser or purchasers thereof, his, her, or their executors, administrators, or assigns, or as he, she, or they shall order or direct; *And upon this further trust*, that the said trustees or trustee for the time being do and shall stand possessed of, and apply money which shall be received upon any mortgage

And upon further trust to stand possessed of the monies

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or chapel shall for the time being be allotted under the provisions hereinbefore for that purpose contained, shall for the purposes of these presents be considered the seat-holders of the said church or chapel, and no other persons shall be considered such seatholders.

sons only to whom the pews and seats shall be allotted as before mentioned, shall be considered seatholders.

That it shall be lawful for the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested as aforesaid, or the major part of them, at their own discretion, to remove any of the seatholders from the pews or seats which shall have been allotted to them as aforesaid; *But* such removal shall not be final, in case the parties removed, or any other seatholder of the said church or chapel, shall, within one calendar month therefrom, procure the propriety of the same to be referred to the consideration of the seatholders of the said church or chapel, present and qualified to vote at any such general meeting, as hereinafter is mentioned, unless the same shall be confirmed at such general meeting.

That the managers may remove seatholders at their discretion, but subject to appeal to a general meeting.

That the persons who shall for the time being be removed from their pews or seats as aforesaid, shall not cease to be seatholders so far as regards the power hereinafter conferred of calling and attending any such general meeting of seatholders as hereinafter is mentioned, until either the time hereinbefore limited for referring the propriety of any such removal to the consideration of the seatholders as aforesaid shall have elapsed, or such removal shall have been confirmed by the seatholders present and qualified to vote at such last mentioned general meeting.

That the seatholders so removed shall, as regards calling meetings, be deemed seatholders till their removal is confirmed.

That all such sums of money as shall be subscribed and paid by any person or persons whomsoever for or towards the building of the said church or chapel, and other buildings so to be erected and built as aforesaid, or for altering, repairing, or rebuilding the same, or for discharging any existing incumbrances thereon, or for or towards the support of the public worship of God in the said church or chapel, or for defraying the expenses attending the same, shall be paid to such person or persons as the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinbefore is mentioned, shall for that purpose nominate and appoint;

That subscriptions, &c. shall be paid to such person as the managers for the time being shall appoint,

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

or sale, which shall be made under the trusts hereinbefore declared, upon and for such trusts, intents, and purposes, for the benefit of the said society, in repairing, enlarging, or rebuilding the trust premises, or otherwise, as the major part of the male members of the said society, present and qualified to vote at any such general meeting, as hereinafter is mentioned, shall direct or appoint; *And upon this fur-*

received on mortgages and sales, as the major part of the men-members shall direct.

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whose receipt shall be a sufficient discharge.

and that the receipt of such person or persons shall be a sufficient discharge for the same.

That all sums so paid shall be afterwards paid to the bankers of the managers.

THAT the sums of money which shall be so subscribed and paid as aforesaid, shall, with all convenient speed after the same shall be received, be paid by the person or persons by whom the same shall be so received into the banking house of the said , or the banking house of such other persons as the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested as hereinbefore is mentioned shall from time to time nominate and appoint as their bankers, to an account, to be entitled, &c.

That minutes of the proceedings of managers shall be entered into books.

THAT minutes of the proceedings of the meetings of the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested as hereinbefore is mentioned, and also of the meetings of the seatholders for the time being of the said church or chapel, to be convened pursuant to these presents, shall be entered into separate books, to be provided and kept for those purposes, and signed by the chairman at the said meetings.

That the names of seatholders, and the amount of their subscriptions, and all receipts, &c. shall be entered into books.

THAT the names of the seatholders for the time being of the said church or chapel, with the amounts of the respective subscriptions of such of them as are subscribers thereto, and full and particular accounts of all receipts, payments, disbursements, transactions, matters, and things whatsoever relating to the said church or chapel, or the affairs or concerns thereof, shall be entered and recorded in proper books, to be kept for those purposes by the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinbefore is mentioned.

That the names of seatholders who are communicants, shall be entered into separate books;

THAT the names of such of the seatholders for the time being of the said church or chapel as shall be communicants therein, with the times when they shall respectively have so communicated, shall be entered and recorded in a separate book, to be kept for that purpose by the kirk session, and the names of such of them as are heads of families shall be distinguished in the said book by an asterisk, or in such other manner as the said kirk session shall think fit; *And* if any dispute or doubt shall arise respecting the right of any seatholder and com-

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

ther trust, that in case the said society of , at aforesaid, shall at any time hereafter be totally dissolved or dispersed, and the public worship of God in the said meeting-house, shall be discontinued for the period of two years together, *Then* the said trustee or trustees for the time being do and shall assign and assure the said trust premises unto such person or persons, in such man-

And upon further trust, that if the society is dissolved, the ministers shall

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municant to be considered the head of a family, such dispute or doubt shall be determined by the kirk session.

That the names of children who are baptized, shall be entered into other books.

THAT the names of the children, and other persons who shall be baptized or christened in the said church or chapel, with the names of their respective parents, or other suitable descriptions, and the times when such baptisms or christenings shall respectively have taken place, shall be entered and recorded in a separate book, to be kept for that purpose by the said kirk session; such entries to be signed by the minister for the time being of the said church or chapel.

That the above books shall be kept in the vestry of the chapel.

THAT the several books hereinbefore mentioned shall be deposited in an iron safe or chest, to be put in the said session house or vestry room, or some other room in the said church or chapel appropriated for that purpose; *And* shall at all times be open to the inspection of the kirk session, and of the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinbefore is mentioned, and of the trustees or trustee for the time being of the said church or chapel; and the entries in the said several books hereinbefore mentioned, shall, for the purposes of the trusts hereby declared, be sufficient evidence of the several matters therein contained.

(*That yearly accounts shall be made, and audited, and settled*).

That the ornaments and furniture of the chapel shall be considered as vested in the trustees.

THAT the ornaments and furniture of the said church or chapel, and the communion service, and all other personal goods and chattels, which shall be purchased for the use of the said church or chapel, and other trust premises, shall be delivered to, and be considered as vested in, the said trustees or trustee for the time being of these presents, who shall permit the same to be used and enjoyed for the purposes for which the same shall have been purchased; *But* subject nevertheless to such and the like provisions, declarations, and agreements as are hereinbefore mentioned and contained with respect to the said piece or parcel of land or ground, hereditaments, and premises hereby granted and released, or intended so to be, or as near thereto as the difference in the nature of the property, and other circumstances, will admit of.

(*Divers provisions in regard to appointing new trustees*).

DEED OF TRUST OF A DISSENTERS' MEETING-HOUSE.

ner, and for such purposes, either religious or civil, as two-thirds in number of those male persons who, at the time of such dissolution or dispersion, shall be, and for one year then immediately preceding shall have been, subscribers to the support of the public worship of God in the said meeting-house, and members of the said society, and communicants therein, shall by any writing under their hands, direct

dispose of the trust premises in such manner as two-thirds of the male mem-

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That a meeting of seatholders shall be called as occasion requires.

THAT a general meeting of the seatholders of the said church or chapel shall be called when and so often as, for any of the purposes hereinbefore mentioned, occasion shall require.

That the kirk session, &c. may call such meetings.

THAT it shall be lawful for the kirk session of the said church or chapel, or for the persons in whom the management of the affairs of the said church or chapel shall for the time being be vested, as hereinbefore is mentioned, or the major part of them, or for the trustees for the time being of the said church or chapel, or the major part of them, to call a general meeting of the seatholders of the said church or chapel whenever they may respectively think proper so to do.

That notice of such meetings shall be given on the church door, &c.

THAT of every general meeting of the seatholders which shall be so called as aforesaid, public notice shall be given at the said church or chapel at the close of divine service, both morning and evening, by the precentor for the time being of the said church or chapel, on the two Sundays immediately preceding the day of the meeting, and also by writing, to be affixed to the principal doors of the said church or chapel, on the same two Sundays; *And* if the object of the meeting for the time being, called as aforesaid, shall be the election of a minister, or the decision or consideration of any matter of complaint which shall be referred to the decision of the seatholders under or by virtue of the provisions hereinbefore for that purpose contained, the object of the meeting shall be stated at the time of calling the same.

That no such meeting shall be held earlier than Thursday.

THAT no general meeting of the seatholders, which shall be so called as aforesaid, shall be held earlier than the Thursday immediately succeeding the last Sunday on which such notice thereof shall have been so given, as hereinbefore is mentioned.

That if the kirk session and trustees refuse to call meetings, twenty seatholders may call them.

THAT if the kirk session of the said church or chapel, or the trustees for the time being of the said church or chapel, or the major part of them, shall neglect or refuse, for the space of fourteen days, to call a general meeting of the seatholders of the said church or chapel, on being requested so to do in writing, by any twenty seatholders in the said church or chapel, who shall, at the time of such request, have respectively subscribed towards the support of the public worship of God in the said church or chapel, the sum of two guineas or upwards per

or appoint; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the receipt or receipts of the trustees or trustee for the time being, for any money which shall be paid on any such mortgage or sale as aforesaid, shall effectually discharge the person or persons paying the same from being answerable or accountable for the misapplication or nonapplication thereof, and from being liable to see to the application of the same;

DEED OF TRUST OF A DISSENTERS' MEETING HOUSE.

bers of the society at the time of its dissolution shall appoint. Declaration

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annum, for the space of six calendar months then immediately preceding, and shall have communicated in the said church or chapel at the last celebration of the sacrament of the Lord's Supper therein, or within the space of twelve calendar months then immediately preceding; *Then* and in such case, and so often as the same shall happen, it shall be lawful for the said seatholders so requesting such meeting to be called as aforesaid, to convene a general meeting of the seatholders of the said church or chapel, by giving notice thereof in writing, to be affixed on the principal doors of the said church or chapel, at least three weeks before the time appointed for holding the said meeting, which notice shall state the object of the said meeting, and the time appointed for holding the same, and shall be signed by the seatholders calling the same.

THAT all general meetings of the seatholders of the said church or chapel, to be called in pursuance of these presents, shall be held in the said church or chapel, or in the session house or vestry room belonging thereto.

That meetings of seatholders shall be held in the chapel or vestry.

(*Clauses authorizing the minister to attend meetings of seatholders, but not to interfere therein; and prescribing the qualifications of seatholders who may attend meetings, called for different purposes.*)

THAT none of the seatholders in the said church or chapel shall be at liberty to attend the said meetings of seatholders, unless they are so respectively qualified to vote at the same as hereinbefore is mentioned, and no female shall attend the said meetings, except by such proxy as aforesaid.

That no seatholders shall attend meetings for business, unless so qualified as before is mentioned.

(*That the trustees may vote notwithstanding they are trustees*).

THAT three-fourths of the seatholders, present and qualified to vote at any such general meeting as hereinbefore is mentioned, shall and may, if they shall see occasion so to do, adjourn the said meeting to a future day, to be appointed at the said meeting; *But* no subject shall be discussed at such adjourned meeting, except the subject in discussion at the previous meeting at the time of the adjournment thereof.

That three-fourths of the seatholders at a meeting, may adjourn it.

THAT if at the expiration of fifteen minutes after the time appointed for holding any such general meeting of seatholders as aforesaid, there

That if twenty seatholders are not present at a meeting

DEED OF TRUST OF A DISSENTERS' MEETING HOUSE.

that the receipts of trustees shall be sufficient discharges.

And that mortgages and sales made under the deed shall be binding on all parties.

Clause for appointing new trustees.

And that every mortgage and sale which shall be made, and every assignment or other assurance which shall be executed by the said trustees or trustee for the time being, pursuant to the trusts hereinbefore declared, shall be binding and conclusive on all persons claiming any benefit or interest under or by virtue of these presents; *And* that no person or persons to or with whom any such mortgage or sale as aforesaid shall be made, shall be obliged to require any evidence that such mortgage or sale be made at such request as is hereinbefore in that behalf mentioned, or in any manner to enquire into the necessity, propriety, or regularity of the same mortgage or sale; PROVIDED ALWAYS, and it is hereby agreed and declared, &c. that when and so often as from death or disability, or disinclination to act, there shall be less than five acting trustees of the said trust premises, the vacancies in the number of trustees shall be supplied by the appointment of so many additional male persons, being Protestant dissenters of the denomination of [ ], as will make up the number of eleven trustees, such appointment to be made by the major part of the male

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within a quarter of an hour, it shall stand dissolved.

That if twenty are present within a quarter of an hour, a chairman shall be elected.

That each seatholder shall have a vote, and the chairman a casting vote.

shall not be twenty seatholders then and there present, the meeting shall be dissolved.

That if, at the expiration of fifteen minutes after the time appointed for holding any meeting of seatholders as aforesaid, there shall be twenty seatholders and upwards then and there present, the major part of such seatholders shall immediately elect a chairman, and proceed to business; but the said meeting shall, until the same shall be dissolved or adjourned, be open to the admission of any seatholders who shall subsequently come in and attend the same.

THAT each of the seatholders present at any such general meeting as hereinbefore is mentioned, shall have a vote at the said meeting, and the chairman of the said meeting shall have a casting vote in all cases where the votes on each side of any question which shall be put to the vote shall be equal."

(*Special provisions in regard to meetings for electing a minister, and giving notice of them to the president or moderator for the time being of the London Presbytery, or his clerk, and for requesting one of the Members of the London Presbytery to attend the meeting.*)

(*Also several very special provisions in regard to selling or disposing of the trust premises, in case public worship should be discontinued in the chapel for five entire and successive years.*)

DEED OF TRUST OF A DISSENTERS' MEETING HOUSE.

members of the said society present and qualified to vote at any such general meeting as hereinafter is mentioned, but nevertheless with the consent and approbation of the surviving and continuing trustees or trustee for the time being; *And* that thereupon such assignment shall be made and executed, &c. (as *ante*, p. 416); PROVIDED ALWAYS, and, &c. (*Clause for the indemnity of the trustees, as ante*, p. 416); PROVIDED ALWAYS, &c. that for any of the purposes hereinbefore mentioned, a general meeting of the members for the time being of the said society, and communicants therein, shall be held when and so often as occasion shall require; *And* that of every such general meeting notice shall be given at the said meeting-house during the time of divine service, on the Sunday immediately preceding the day of the meeting; *And* that no general meeting shall be held earlier than the Wednesday immediately succeeding the Sunday on which such notice thereof shall have been given as aforesaid; *And* that at every such general meeting, held for the purpose of electing or removing a minister or pastor, every member for the time being of the said society, as well females and nonsubscribers as others, shall be entitled to vote; *But* that at the general meetings to be held for any other of the purposes aforesaid, the female members of the said society shall have no vote, and such only of the male members of the said society who are communicants therein, and subscribers to the said meeting-house of at least one guinea a year, and who have been such members and subscribers for twelve calendar months previously to such general meeting, shall be entitled to vote; *And* that the trustees of these presents, present and qualified to vote at any such general meeting as aforesaid, shall, notwithstanding their being such trustees, be at liberty to vote upon all questions agitated or discussed at the meeting; (*Short covenants from the assignor with the trustees for title, see Index, Titles* COVENANTS, LEASEHOLDS.) IN WITNESS, &c.

Clause for the indemnity of the trustees.

Provisions in regard to calling meetings of the members of the society;

and who may vote at them.

OF A CHAPEL FOR WESLEYAN METHODISTS.

Conveyance *of a Piece of Freehold Land, with a* Chapel *erected thereon, to* Trustees, *for the use of the Society of* Wesleyan *Methodists at* (*a*).

Parties. Recites the conveyance to the grantor;

THIS INDENTURE, made the day of , in the year of our Lord 18 , Between [*grantor*] of, &c. of the one part, and [*trustees*], of the other part; Whereas by indentures of lease and release, bearing date respectively the and days of , and respectively made between [L. L.] of, &c. of the one part, and the said [*grantor*], of the other part, the piece or parcel of land or ground, hereditaments, and premises hereinafter particularly mentioned, and intended to be hereby bargained and sold, and their appurtenances, were (in consideration of the sum of pounds, by the said [*grantor*] to the said [L. L.] paid, as in the said indenture of release is mentioned) conveyed by the said [L. L.] unto and to the use of the said [*grantor*], his heirs and assigns for ever (*b*);

Conference form of trust generally used.

(*a*) Most trust deeds for establishing Wesleyan Methodist Chapels are prepared after the form of this precedent. The trusts are called "The Conference Form of Trust," having been approved of at some meeting of conference.

The form appears susceptible of improvement; but it would be of no practical advantage to introduce in this place any other form of trusts, unless it had previously been sanctioned by the conference; for every *new* society wishes to have its chapel deed prepared in like manner as the other chapel deeds in the same connexion.

It is remarkable, that the Conference of Methodists—meeting as it does from year to year—should not have bestowed on so important a subject as the validity and propriety of the trust deeds, prepared for establishing the chapels belonging to the society, (and necessarily involving property to a very great amount), more of its attention.

(*b*) There is no advantage in taking the conveyance by a separate deed, for if the trust deed admit that the conveyance was made *for the purpose of the trusts*, it would seem from the case of *Wellard* v. *Haw-*

OF A CHAPEL FOR WESLEYAN METHODISTS.

AND WHEREAS the sum of pounds, in the said hereinbefore recited indenture of release mentioned to be paid by the said [*grantor*] to the said [L. L.] as and for the consideration money for the hereditaments and premises therein comprised, was not paid out of the proper monies of the said [*grantor*], but was raised, partly by private subscriptions and public collections, by and amongst the society of people called Methodists, assembling at aforesaid, and partly by monies borrowed for that purpose upon the credit of the said society; AND WHEREAS the said society are now erecting and building a chapel or meeting-house in and upon the said piece or parcel of land or ground, hereditaments and premises, for the purposes of religious worship, and have applied to and requested the said [*grantor*] to convey and assure the said hereditaments and premises unto the said several persons, parties hereto of the second part, their heirs and assigns, in manner, and to, for, and upon the uses, trusts, intents, and purposes hereinafter mentioned, expressed, and declared of and concerning the same, which he the said [*grantor*] hath consented and agreed to do: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of the sum of ten shillings of lawful money of Great Britain, by the said several persons, parties hereto of the second part, to the said [*grantor*] paid, at, &c. (the receipt, &c.), HE the said [*grantor*] *Hath* bargained, sold, and confirmed, *And* by these presents *Doth* bargain, sell, and confirm unto the said [*trustees*], their heirs and assigns, ALL THAT piece or parcel of land or ground, situate, lying, and being, &c. containing by admeasurement, &c. abutting, &c. *Together* with the said chapel or meeting-house, and all other erections and buildings now erected and built, or being erected and built upon the same piece or parcel of land or ground, or any part thereof, *Together* with all and singular the rights, members, liberties, privileges, and appurtenances whatsoever, to the said hereditа-

that the consideration money was paid out of money subscribed for that purpose;

and that the grantor has agreed to convey the premises to the trustees as after mentioned.

Witnessing part.

The grantor, in consideration of the premises, bargains and sells to the trustees,

Parcels.

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thorne, 2 B. & A. 96, that the conveyance, as well as the trust deed, must be inrolled, and that the conveyance must in other respects be in conformity with the provisions of the Mortmain Act.

OF A CHAPEL FOR WESLEYAN METHODISTS.

ments and premises belonging or in anywise appertaining; *And* the reversion, &c.; *And* all the estate, &c.; To HAVE AND TO HOLD the said piece or parcel of land or ground, chapel or meeting-house, hereditaments, and all and singular other the premises hereinbefore mentioned and described, and hereby bargained and sold, or intended so to be, and their appurtenances, unto the said [*trustees*], their heirs and assigns; *Upon* the trusts nevertheless, and to and for the intents and purposes hereinafter mentioned, expressed, and declared of and concerning the same, (that is to say); *Upon trust* that they the said several persons, parties hereto of the second part, or the survivors or survivor of them, or the heirs or assigns of such survivor, do and shall, by selling or mortgaging the said chapel and premises, or by the rents and profits thereof, or the contributions to be raised in manner hereinafter mentioned, or by such other lawful and reasonable ways and means as they or he shall think proper, raise and pay all such sum and sums of money as shall have been expended in and about the erecting and completing the said chapel, or shall have been borrowed upon, and are now due and owing for and on account thereof, and for keeping the said premises in proper repair, and all such other sum and sums of money as shall or may be necessary for carrying the trusts herein contained into execution, together with lawful interest for all such sums of money as shall be so raised: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that before any sale shall be made of the said chapel and premises under the trusts herein contained, the trustees or trustee for the time being shall have caused notice in writing, signed by the major part of them, specifying therein the premises to be sold and the sum intended to be raised by such sale, the cause of raising the same, and the intended application thereof, to be delivered to the president of the then next conference of the preachers late in connexion with the Reverend John Wesley, deceased, hereinafter described, on the first day the said conference shall assemble; and if such conference shall not pay to the person or persons appointed by the major part of the said trustees to receive the same, the sum of money therein men-

Habendum to the trustess in fee, upon the trusts following, *viz.*;

Upon trust, by sale, mortgage, &c. to raise the expenses incurred in building the chapel, or any monies borrowed on the credit thereof.

Proviso that no sale shall be made till six months after the conference has declined to lend the money to prevent such sale.

OF A CHAPEL FOR WESLEYAN METHODISTS.

tioned, within six calendar months next after the delivery of the said notice, *Then* and in such case, immediately after the expiration of the said six calendar months, it shall be lawful for the said trustees or trustee for the time being to sell the said premises therein mentioned as aforesaid; *And upon further trust* and confidence, that (subject and without prejudice to any sale or mortgage which shall be made under and by virtue of the trusts herein contained) they the said several persons, parties hereto of the second part, or the survivors or survivor of them, or the heirs or assigns of such survivor, do and shall at all times for ever hereafter permit and suffer such person and persons only as shall be appointed at and by the yearly conference of the people called Methodists, to be held at London, Bristol, Leeds, Liverpool, Sheffield, Manchester, or elsewhere, as established by a certain deed poll (*c*), bearing date the twenty-eighth day of February, one thousand seven hundred and eighty-four, under the hand and seal of the said John Wesley, and inrolled in the High Court of Chancery, and no others, to have the use and benefit

And subject as aforesaid, upon trust to permit such person only as shall be appointed at conference for that purpose, to have the use of the chapel for the purposes of preaching, &c.

(*c*) By this deed-poll, after reciting that many chapels had been conveyed by the Reverend John Wesley to different persons, upon trust to permit him, the said John Wesley, and such persons as he should from time to time appoint, to have the use of the said chapels for the purpose of preaching therein, and after his death, upon trust, to permit such persons as should be appointed at the yearly conference of the people called Methodists, in London, Bristol, or Leeds, and no others, to have the use of the said chapels and premises for the purposes aforesaid, and that similar conveyances had been made by other persons, and that for rendering effectual the said trusts it had been thought expedient that the said John Wesley should explain the words "yearly conference of the people called Methodists," contained in the said trust deeds, and declare what persons were members of the said conference, and how the succession and identity thereof was to be continued; it was witnessed, that the said John Wesley did thereby declare, &c. &c. [*here follows a statement to the effect referred to in the recital immediately preceding the testatum clause*]. At this yearly meeting, the general affairs of the society are managed; and on the first day of meeting, a president of the conference is appointed, whose office, of course, continues only during the sittings of the conference, which usually last, by adjournment from time to time, for about six weeks.

Deed poll under the hand and seal of John Wesley, explaining the meaning and constitution of "The yearly Conference of Methodists."

OF A CHAPEL FOR WESLEYAN METHODISTS.

of the said chapel and premises whenever he or they shall think proper, for the purpose of preaching and expounding God's holy word, and for the performing of all other acts of religious worship, without any suit, denial, or interruption whatsoever, of or by the said trustees or trustee thereof for the time being, or any of them (*d*): PROVIDED NEVERTHERLESS, and, &c. that the preacher and preachers, so to be appointed by the conference aforesaid respectively, shall and do preach no other doctrines than those which are contained in certain notes upon the New Testament, and the first four volumes of Sermons, published by the late Reverend John Wesley; and also that the same preacher shall not be sent to the said chapel for more than two years successively, without the consent of the said trustees

Proviso that the preacher shall preach according to certain doctrines held by Mr. Wesley;

and shall not be sent to the chapel for more than two successive

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(*d*) The following trust is from a deed establishing a chapel for a society of the denomination of 'Independent Calvinists.'

Trust to permit a chapel to be used by a society of the denomination of Calvinists.

"*Upon trust* to permit and suffer the said tenement or chapel, and premises, at all times hereafter to be occupied, used, and employed as and for a chapel or place for the public worship of Almighty GOD, for a congregation of Protestant dissenters, commonly called "*Calvinists*," under the ministry of the Rev. [ ], their pastor, and such other minister or ministers of the word of GOD, or preacher or preachers of the gospel, who believe in and maintain the articles of faith and practice compiled by the Reverend Assembly of Divines, convened for that purpose at Westminster in the year of our Lord one thousand six hundred and forty-three, and commonly called the Assembly's Catechism, who is or shall be from time to time, or at any time or times hereafter, ordained and appointed to be the pastor thereof, and to preach therein, according to the rules and regulations hereinafter mentioned and contained."

Another form:

"*Upon trust* to permit, &c. as a place of public religious worship for the service of GOD, by the society of Protestant dissenters at aforesaid, of the denomination of "Independent Calvinists," adhering to the doctrines set forth in the "Shorter Catechism," commonly known by the name of "The Assembly's or Westminster Catechism."

or trustee for the time being, or the major part of them, signified in writing to the said conference, on the first day of their assembling, as above mentioned or referred to; PROVIDED ALSO, and &c. that in case it shall appear to the said trustees or trustee for the time being, that the doctrine, conduct, or abilities of any preacher or preachers, so to be appointed by the said conference as aforesaid, is or are contrary to the above test, erroneous, immoral, or deficient, the said trustees shall proceed according to the rules in that case provided in the rules of pacification in the minutes of conference of 1795 (*e*), which rules shall also regulate all alterations as to the times or additions of public worship in the said chapel; AND IT IS HEREBY FURTHER AGREED by and between the said parties hereto, that it shall be lawful for the said trustees or trustee for the time being, at all times for ever hereafter during the said term, to collect and receive of and from the several persons who shall attend public worship at the said chapel, such sums of money as the said trustees and the superintendant preacher (*f*) of the circuit in which the said chapel may be contained (who shall have liberty to preside in all their meetings), or the major part of them, shall think reasonable; *And* that all such sums of money, so to be collected and received as aforesaid, and all other rents and profits of the said chapel and premises, which shall be from time to time received by the said trustees for the time being (except such collections as shall be made by the preachers for the use of the said society of Methodists at large, or the said conference, or by their special appointment) shall be paid and applied in discharging the debts, taxes, repairs, and other the neces-

years, without the trustees consent.

Proviso for settling any disputes between the trustees and the minister.

Provision as to the collection of monies, and the application of them.

(*e*) These rules were agreed on in conference soon after the decease of Mr. Wesley, to prevent a schism in the society. They are well known by the Wesleyan Methodists. Whether they can be properly referred to (not being stamped), may admit of question. See the Stamp Act, 55 Geo. 3. c. 184, *Schedule*. Part I. word SCHEDULE.

(*f*) At the yearly conference of the society, a minister is appointed to each Methodist chapel in the kingdom; and this appointment is generally renewed for the next year, or two successive years, but seldom oftener. The country is divided into districts or circuits, and one of the ministers in each circuit is appointed "superintendant minister" of it.

OF A CHAPEL FOR WESLEYAN METHODISTS.

sary expenses of the said chapel, and towards the support of the preachers stationed by the said conference as aforesaid in the circuit in which the said chapel may be comprised; *And* that the surplus of such sums of money, rents, and profits (if any) shall be laid out and applied in and towards the support of the preaching of the gospel in the said circuit, and among such poor persons of the society of Methodists at aforesaid, or elsewhere, as the trustees and the superintendant preacher, together with the men-leaders of classes (*g*) and stewards of the said society for the time being, or the major part of them, shall think proper; AND IT IS HEREBY FURTHER DECLARED AND AGREED, &c. that in case the society of Methodists at aforesaid shall become extinct, or in case the trustees for the time being, or the major part of them, and the said conference (to be signified by a note in writing from their president for the time being), shall be of opinion that a larger or more convenient chapel is necessary, *Then* and in either of the said cases, it shall be lawful for the said trustees for the time being to sell and dispose of the said chapel and premises, free from the trusts hereby declared, and to sign and give receipts for the purchase-money for which the same shall be sold; *And* that the purchaser or purchasers, after any assurances executed thereof, and a receipt given for the purchase-money, shall not be concerned to see the application of, or be answerable or accountable for the loss, misapplication, or nonapplication of his, her, or their purchase money or purchase monies; AND IT IS HEREBY AGREED AND DECLARED, &c. that the said trustees for the time being shall, by and out of the monies to arise by such sale as aforesaid, in the first place, pay and discharge all such debts as may be then owing upon or on account of the said chapel and premises; *And* in case there shall remain any surplus of the said monies, *Then, Upon trust* (in the former case) to lay out the same, as the conference (to be

Provision for sale of the trust premises, if the society at ———, should become extinct, or the trustees and conference think a sale desirable.

Trusts of the monies to arise from such sale.

(*g*) The most distinguished members for piety in each different society are appointed to hold private weekly meetings with the younger and more inexperienced members, for the purpose of giving advice and instruction, where needful, and encouraging one another in a religious life; and these meetings are called "Class Meetings;" and the persons appointed to hold them, are called "Leaders of Classes."

OF A CHAPEL FOR WESLEYAN METHODISTS.

signified by a note in writing as aforesaid), and the said trustees, or the major part of them, shall think fit; *And* (in the latter case) to apply the same in the purchase or building of another more suitable chapel, to be settled upon the like trusts, and for the like purposes, as herein mentioned with respect to the said chapel and premises hereby granted and released, or intended so to be; AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by all the said parties hereto, that in case any of the trustees herein named, or any person or persons to be appointed a trustee or trustees of the said chapel and premises, by virtue of the power or authority hereinafter for that purpose contained, shall withdraw of his own accord, or be excluded from the said Methodist Society by and with the consent of the major part of the other trustees for the time being (as in the rules of pacification above referred to is expressed), *Then* and in such case, he or they so ceasing to be a member of the said society, or being so excluded, shall and will, at the expense of the trust fund, and at the request of the other trustees for the time being, and upon being indemnified by such other trustees against the payment of any sum or sums of money which he or they may have jointly or separately bound himself or themselves to pay in respect of the said chapel and premises, and on being paid all monies which may appear due to him or them on account of the said trust premises, release and relinquish, or convey and assure all his or their trust, estate, and interest of and in the said premises, to the other trustees of the same for the time being, by such acts and deeds, and in such manner as the other trustees for the time being, or their counsel, shall advise or require: PROVIDED ALSO, and, &c. that when and so soon as the said trustees shall, by death, incapacity, or ceasing to be members of the said Methodist Society, or refusal to act, or otherwise, be reduced to the number of , *Then* and in every such case, the surviving or continuing trustees, together with the superintendant preacher of the said circuit for the time being, shall, within three calendar months then next, nominate and appoint so many more persons, members of the Methodist Society at aforesaid, or elsewhere, (but no others,) to be trustees of the said chapel and premises, in the room and stead of the

Clause for changing trustees.

OF A CHAPEL FOR WESLEYAN METHODISTS.

trustees so dying, or becoming incapable, or refusing to act as aforesaid, as shall be necessary to make up and preserve the number of trustees in the whole; *And* that the continuing trustees for the time being shall and will also within the last mentioned times, at the charges of the said society, well and sufficiently transfer and set over the said chapel and premises, with the appurtenances, in such manner as that the same may be duly vested in such surviving or continuing trustees, and the other new trustees to be nominated and appointed as aforesaid, upon the trusts, and for the intents and purposes herein mentioned and expressed, or so many of them as shall be then existing, or capable of taking effect: PROVIDED ALWAYS, that it shall and may be lawful, whenever a reduction shall take place in the number of trustees by the means aforesaid, although the said trustees may not be reduced to the number of four, for the surviving or continuing trustees, together with the superintendant preacher as aforesaid, to proceed in the manner above mentioned, so as to make and preserve the number of trustees in the whole at all times: PROVIDED ALWAYS, and, &c. that in case the said conference appointed, or to be appointed in pursuance of the said deed of the twenty-eighth day of February one thousand seven hundred and eighty-four, shall at any time cease to be, or be dissolved, or the said deed shall cease to be acted upon, or in case the said conference shall refuse to appoint a preacher for supplying the said chapel at aforesaid, and the same shall be unsupplied for the space of three calendar months (except in case of sickness of the preacher), *Then* and in every such case, they the said trustees for the time being, or the major part of them, shall and do from time to time nominate and appoint such person or persons to preach and expound God's holy word in the said chapel and premises, and to have the use and enjoyment thereof, at such times and in such manner as the said trustees, or the major part of them, shall think fit: PROVIDED NEVERTHELESS, that such person or persons, so to be appointed as last aforesaid, preach no other doctrines than those which are contained in the notes and sermons above mentioned and referred to, and be of sufficient ability, and moral in their conduct. IN WITNESS, &c.

Provision for appointing a preacher, if the conference should be discontinued, or no minister should be appointed by it to the said chapel.

Proviso that the minister appointed under the last clause preach no other than the doctrines above mentioned, and be of good moral conduct.

AGREEMENT *between a Debtor and his Creditors, preparatory to the Execution of a* DEED *of* COMPOSITION *between them.*

AGREEMENT TO EXECUTE A DEED OF COMPOSITION.

MEMORANDUM of AGREEMENT, dated this day of , 18 , BETWEEN [*debtor*] of, &c. of the one part, and the several other persons whose names are hereunder written, being respectively creditors of the said [*debtor*], of the other part; *Whereby* it is agreed as follows, (that is to say):

Parties.

THAT the said [*debtor*] shall, within one calendar month from the date hereof, by such conveyances, assignments, and assurances as counsel shall advise, well and effectually convey, assign, and assure, all and singular his real and personal estate and effects whatsoever and wheresoever, unto such persons as the major part of the persons who shall sign this agreement within days from the date hereof, shall, at a meeting to be convened for that purpose, nominate and appoint in that behalf, their heirs, executors, administrators, and assigns, according to the nature and quality of the said estates respectively, *Upon trust*, by the usual ways and means, to convert the same into money, and to apply the money arising thereby, after deducting the expenses of the trust, unto and amongst the creditors of the said [*debtor*] rateably and in proportion according to the amount of their several and respective debts.

Agreement that the debtor shall convey his real and personal estate to trustees, for the benefit of the creditors;

THAT upon the execution of such conveyance and assignment as aforesaid, the said several persons parties hereto of the second part, their respective executors or administrators, and their respective partner or partners, shall and will execute and give unto the said [*debtor*] a good and effectual release and discharge of the debt or debts then due and owing to them respectively from the said [*debtor*], but such release and discharge shall nevertheless be subject to be void in the event of a commission of bankrupt being issued and awarded against the said [*debtor*] within six

that the creditors shall release the debtor from their debts;

such release to be void, if the debtor is made a bankrupt within six months;

AGREEMENT TO EXECUTE A DEED OF COMPOSITION.

calendar months next after the date of such conveyance and assignment as aforesaid.

that until the conveyance is executed, or the time for the execution of it has elapsed, the creditors will not sue the debtor;

THAT in the mean time, and until such conveyance and assignment as aforesaid shall be executed, or the time hereinbefore limited for executing the same shall have expired, the said several persons, parties hereto of the second part, their executors or administrators, or their respective partner or partners, shall not nor will commence or prosecute any proceeding or proceedings at law or in equity, for the recovery of the debt or debts due and owing to them respectively from the said [*debtor*] as aforesaid; *And* that if they or any of them shall act contrary to this agreement, *This* agreement shall and may be pleaded in bar to any such proceeding or proceedings as aforesaid, and the said [*debtor*], his heirs, executors, and administrators, shall from thenceforth be fully and absolutely released and discharged from the debt or debts in respect of which such proceeding or proceedings as aforesaid shall have been taken.

and that in the conveyance to be executed by the debtor, there shall be inserted such clauses as counsel shall advise.

AND LASTLY, that in such conveyances and assignments as aforesaid, there shall be contained all such clauses and provisions as the trustees, so to be appointed as hereinbefore is mentioned, or their counsel in the law, shall direct or approve. IN WITNESS, &c.

DEED *of* RELEASE *of Debts in a Schedule, where a Composition was paid by some Friends of the Debtor.*

RELEASE OF DEBTS, ON PAYMENT OF A COMPOSITION.

THIS INDENTURE, made the day of , 183 , BETWEEN the several persons whose names are mentioned in the first column of the schedule hereunder written or hereunto annexed, of the first part; [A. B.] of, &c. and [C. D.] of, &c. of the second part; and [*debtor*] of, &c. of the third part: WHEREAS the said [*debtor*] is indebted to the said several persons parties hereto of the first part, in the several sums of money set opposite to their respective names in the second column of the said schedule hereunder written or hereunto annexed; AND WHEREAS the said [*debtor*] is unable to pay any part of the said several sums of money in which he is so indebted as aforesaid; AND WHEREAS the said [A. B.] and [C. D.], as two of the friends of the said [*debtor*], lately proposed and agreed to pay to the said several persons, parties hereto of the first part, the several sums of money, set opposite to their names in the third column of the said schedule hereunder written or hereunto annexed, if they would accept the same by way of composition and in full satisfaction of the said several debts or sums in which the said [*debtor*] is so indebted to them as aforesaid, and would execute the release hereinafter contained; which they the said several persons parties hereto of the first part respectively consented and agreed to do; AND WHEREAS the said [A. B.] and [C. D], in pursuance of their said proposal and agreement, have this day paid to the said several persons parties hereto of the first part, the several sums of money set opposite to their respective names in the said third column of the said schedule hereunder written or hereunto annexed, as they the said several persons parties hereto of the first part, do hereby respectively admit and acknowledge: Now

Parties.

Recites that the debtor is indebted to the parties of the first part, as mentioned in the schedule;

that he is unable to pay the debts;

that A. B. and C. D. have agreed to pay a composition on them, and that the creditors have agreed to execute a release;

and that the composition money has been accordingly paid.

Witnessing part.

RELEASE OF DEBTS, ON PAYMENT OF A COMPOSITION.

The creditors, in consideration of such payment, release the debtor from the debts in the schedule, and all claims on account thereof.

THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement on the part of the said several persons, parties hereto of the first part, and in consideration of the said several sums of money so paid to them by the said [A. B.] and [C. D.], as hereinbefore is mentioned and recited, THEY the said several persons, parties hereto of the first part, *Do* hereby for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, acquit, release, and for ever discharge the said [*debtor*], his heirs, executors, and administrators, and his and their estates and effects whatsoever and wheresoever, of and from the said several debts or sums of money set opposite to the respective names of them the said several persons parties hereto of the first part, in the said second column of the said schedule hereunder written or hereunto annexed, and every part thereof respectively; *And* also of and from all actions, suits, claims, and demands whatsoever, for or on account of the same, or any of them, or for or on account of any matter, cause, or thing whatsoever, in anywise relating thereunto. IN WITNESS, &c.

Schedule.

The Schedule referred to in and by the above written Indenture.

Names of Creditors.	Amounts of their several Debts.	Amounts of sums received in satisfaction of those Debts.
A. B.	75*l.*	27*l.*

DECLARATION OF TRUST, OF SURPLUS MONIES AFTER A SALE, FOR CREDITORS.

DECLARATION *of* TRUST, *in Favor of* CREDITORS, *of the* SURPLUS *of Monies to arise from the Sale of an Estate conveyed to a* TRUSTEE *for Sale, by a separate Deed; and* RELEASE *from the Creditors, in consideration of the Provision so made for them.*

THIS INDENTURE, made the day of , 18 , BETWEEN [*debtor*] of, &c. esq. of the first part; [*trustee*] of, &c, gent. of the second part; and the several other persons, whose names and seals are hereunto subscribed and affixed by themselves or their several agents or attornies, of the third part; WHEREAS under or by virtue of the last will and testament of [ ], late of aforesaid, esq. deceased, bearing date the day of , and proved in the Prerogative Court of the Archbishop of Canterbury on the thirteenth day of March, one thousand eight hundred and twenty-two, the said [*debtor*] became seised of or well entitled to, in fee-simple in possession, divers messuages or tenements, lands and hereditaments, in the said will particularly mentioned, situate at , and in the said county of , and their appurtenances, but subject, as to the said hereditaments situate at , to a mortgage thereon, for securing to [A. B.] of, &c. the sum of pounds, and interest; AND WHEREAS by indentures of lease and release, bearing date respectively the and days of now last past, and made, or expressed to be made, between the said [*debtor*] of the one part, and the said [*trustee*] of the other part, the said messuages or tenements, lands and hereditaments, of or to which the said [*debtor*] became so seised or entitled by virtue of the said will of the said [ ] as aforesaid, and their appurtenances, were conveyed and assured by the said [*debtor*] unto and to the use of the said [*trustee*], his heirs and assigns for ever, upon trust to sell and dispose of the same by public auction or private contract, as he or

Parties.

Recites that under the will of ——— the debtor became entitled to hereditaments at ——, and ———, but as to the hereditaments at ———, subject to a mortgage to A. B. for —*l.* and interest.

That by indentures of lease and release, &c. the aforesaid hereditaments were conveyed to the trustee, In trust to sell;

DECLARATION OF TRUST, OF SURPLUS MONIES AFTER A SALE, FOR CREDITORS.

they should think fit (*a*), and to apply the money arising thereby in the manner in the said indenture of release declared and hereinafter in part mentioned, (that is to say); Upon trust, that the said [*trustee*], his heirs or assigns should, with and out of the same, in the first place, pay and discharge the costs and expenses of preparing and perfecting the said indentures now in recital, and of carrying the trusts thereby created into execution, and of completing and perfecting the sales thereby directed, and in deducing and making out the title to the said premises, *And* also the costs, charges, and expenses of redeeming the hereditaments and premises comprised in the therein and hereinbefore mentioned mortgage, and of procuring a reconveyance of the same hereditaments and premises; *And* in the next place, pay, satisfy, and discharge the principal monies and interests which should be found to be due and owing on the said mortgage; *And* in the next place pay and discharge the sum or sums of money (if any) which should be found due on any judgment or judgments that might be entered up against the said [*debtor*]; *And* should pay the clear surplus or residue of the said monies, so to arise from such sale as aforesaid, unto the said [*debtor*], his executors, administrators, and assigns, for his and their own absolute use and benefit; AND WHEREAS the said [*debtor*] is indebted to the said several persons whose names are mentioned in the schedule hereunder written or hereunto annexed, in the several sums of money set opposite to their respective names in the same schedule; AND WHEREAS the said [*debtor*] hath agreed to make such provision for the payment of the said several debts and sums of money in which he is so indebted as aforesaid, as hereinafter is mentioned; *And* the said several persons, parties hereto of the third part, have respectively agreed to execute the release hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of

and apply the monies as follows, *i. e.*;

in payment of the costs of preparing the deeds,

and executing the trusts,

then of the mortgage debt;

and the judgment debts against the debtor (if any);

and to pay the surplus or residue to the debtor absolutely.

that the debtor is indebted to the parties of the first part in the sums mentioned in the schedule;

and that he has agreed to provide for such debts, in manner hereinafter mentioned;

and that the creditors have agreed to release him.

First witnessing part.

(*a*) It is generally advisable to convey the property intended to be sold, to the trustees for sale, by a separate deed, in order that the deed of composition with the creditors may not appear on the face of the title.

the said agreement on the part of the said [*debtor*], HE the said [*debtor*], with the privity of the said [*trustee*], (testified by his being a party to and sealing and delivering these presents,) *Doth* hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree, with and to the said several persons, parties hereto of the third part, and each of them, and their, and each of their executors and administrators, that the said [*trustee*], his heirs, executors, administrators, or assigns, shall stand and be possessed of and interested in the clear surplus or residue of the monies which shall arise from the sale and disposition directed to be made by the said hereinbefore recited indenture of release as aforesaid, and which shall remain after answering the several trusts and purposes hereinbefore mentioned, upon the trusts, and in manner following, (that is to say); *Upon trust*, that he the said [*trustee*], his heirs, executors, administrators, or assigns, *Do* and shall, with and out of the same, in the first place, pay, retain, and discharge the costs and expenses of preparing and perfecting these presents, and in the next place pay, satisfy, and discharge the said several debts or sums of money mentioned and set forth in the said schedule hereunder written or hereunto annexed, or so much and such part thereof as the said trust monies shall extend to pay, by an equal pound rate, according to the amount of the same debts or sums, and without any preference or priority in payment whatsoever; *And* if the said surplus monies shall be more than sufficient to pay the whole of the said debts or sums of money, then do and shall pay so much of such monies as shall remain after payment of the said several debts or sums, unto the said [*debtor*], his executors, administrators, and assigns, for his and their own use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if any of the said persons whose names are mentioned in the said schedule hereunder written, or hereunto annexed, shall not by themselves, or their respective agents or attornies thereunto legally authorised, execute these presents, or a duplicate thereof, on or before the day of , 18 , *Then*, and in such case, it shall be lawful for the said [*trustee*], his heirs, executors, administrators, and assigns, and he and they

DECLARATION OF TRUST, OF SURPLUS MONIES AFTER A SALE, FOR CREDITORS.

Covenant from the debtor, that the trustees shall stand possessed of the surplus of the monies to arise from the sales to be made under the recited indenture, upon the trusts following, *viz.*;

in the first place, to pay the costs of preparing this deed;

and in the next place, the debts mentioned in the schedule, by an equal pound rate;

and the surplus, (if any), to the debtor.

Proviso that if any of the creditors do not join in and execute these presents, the trustee shall pay to the debtor the sums those creditors would have received if they had joined in the deed.

DECLARATION OF TRUST, OF SURPLUS MONIES AFTER A SALE, FOR CREDITORS.

are hereby required, at the request of the said [*debtor*], his executors, administrators, or assigns, to pay to him the said [*debtor*], his executors, administrators, or assigns, for his and their own use and benefit, all such sum or sums of money as would, under or by virtue of these presents, have been payable to the person or persons who shall not, by himself or themselves, or his or their agent or agents, attorney or attornies, have executed these presents, or a duplicate thereof as aforesaid, if such person or persons had so executed the same, any thing hereinbefore contained or to be inferred to the contrary thereof in anywise notwithstanding; (*Clause for changing and appointing new trustees, and for the indemnity of the trustees*): AND

Declaration that sales made under the recited indenture shall be binding on the creditors.

IT IS HEREBY EXPRESSLY AGREED AND DECLARED between and by the said parties hereto, that all such sales, contracts, agreements, conveyances, and assurances as shall be made, entered into, and executed by the said [*trustee*], his heirs or assigns, or other the trustee or trustees for the time being of the said hereinbefore recited indenture of release, by virtue, or in execution of the trusts of the same indenture, shall be valid and effectual, without the concurrence or assent of the said [*debtor*], or his heirs, or of the several persons, parties hereto of the third part, or any of them, or their respective executors or administrators; *And* shall bind the said [*debtor*] and his heirs, and the said several persons, parties hereto, of the third part, and their respective executors and administrators, and all persons whomsoever claiming or to claim, by, from, through, under, or in trust for them or any of them; *And*

And that the trustee's receipts shall be sufficient discharges.

that the receipt or receipts of the said [*trustee*], his heirs or assigns, or other the trustee or trustees for the time being of the said hereinbefore recited indenture of release, &c. (*shall be sufficient discharges*) (*b*): AND THIS INDENTURE

Second witnessing part. The creditors, in consideration

FURTHER WITNESSETH, that in pursuance and performance of the said agreement, on the part of the said several persons,

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(*b*) In this case the debtor was not liable to the bankrupt laws, and none of his creditors were in partnership. For variations, where the person making the arrangement is a trader, or the debts are due to copartnership firms, see the next precedent.

parties hereto of the third part, and in consideration of the declaration of trust hereinbefore contained, THEY the said several persons, parties hereto of the third part, do hereby for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, acquit, release, and for ever discharge the said [*debtor*], his heirs, executors, and administrators, and his and their estates and effects whatsoever and wheresoever, of and from the several debts or sums of money set opposite to the respective names of them the said parties hereto of the third part, in the said schedule hereunder written or hereunto annexed, and every part thereof respectively; *And* of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for or on account of the same, or any of them. IN WITNESS, &c.

DECLARATION OF TRUST, OF SURPLUS MONIES AFTER A SALE, FOR CREDITORS.

of the aforesaid declaration of trust, release the debtor from their respective debts.

(*Here add the Schedule.*)

DEED *of* COMPOSITION *between Two Persons in Trade, and their Creditors, where the Money agreed to be paid was payable by Instalments and secured by Promissory Notes, and two* SURETIES *joined in the Notes given for the last of the Instalments, and where the Creditors covenanted not to sue until Default should be made in Payment of the Notes, and on Payment thereof, to execute Releases.*

DEED OF COMPOSITION BETWEEN DEBTORS AND CREDITORS.

THIS INDENTURE, made the day of January, 18 , BETWEEN the several persons whose names are set forth in the first column of the schedule hereunder written, or hereunto annexed, and whose names and seals are hereunto subscribed and affixed, either by themselves or their several agents or attornies, duly authorised in that behalf, of the one part; and [*one debtor*] of, &c., and [*other*

Parties.

DEED OF COMPOSITION BETWEEN DEBTORS AND CREDITORS.

debtor] of, &c. of the other part: WHEREAS the said [*debtors*] are indebted to the several persons whose names are mentioned and set forth in the first column of the said schedule hereunder written, or hereunto annexed, either alone or together with their respective partner or partners, in the several sums of money set opposite to their respective names, in the second column of the same schedule, some of which several sums are in part secured by the acceptances of the [*debtors*], for the several amounts set opposite thereto respectively in the third column of the same schedule; AND WHEREAS the said [*debtors*] being unable to pay the said several debts or sums so due and owing from them as aforesaid, it was lately proposed and agreed, that the said several persons, parties hereto of the first part, should accept from the said [*debtors*], a composition of ten shillings in the pound on the amount of their said respective debts, in full satisfaction and discharge of the same debts, to be paid and secured by the instalments, at the times, and in manner following, (that is to say); an instalment of three shillings in the pound on the amount of the said debts, to be paid on the first day of April now next ensuing, and to be in the mean time secured by the promissory note of the said [*debtors*], bearing date the first day of this present month of January, and made payable three months after the date thereof; another instalment of three shillings in the pound on the amount of the said debts, to be paid on the first day of July now next ensuing, and to be in the mean time secured by the promissory note of the said [*debtors*], bearing date the said first day of this present month of January, and made payable six months after the date thereof; and an instalment of four shillings in the pound on the amount of the said debts, to be paid on the first day of October now next ensuing, and to be in the mean time secured by the joint and several promissory notes of [*one surety*] of, &c., and [*another surety*] of, &c., and the said [*debtors*], bearing date the said first day of this present month of January, and made payable nine months after the date thereof; *And* that upon the delivery of such promissory notes as aforesaid, the said parties hereto should respectively enter into the covenants and agreements hereinafter on their respective parts contained; AND WHEREAS in pursuance and part perform-

Recites that the debtors are indebted to the creditors in the sums set forth in the second column of the schedule;

and that being unable to pay them, it has been agreed that a composition of ten shillings in the pound should be accepted, payable at different periods, and shall be secured by promissory notes;

and that the creditors should enter into the covenants hereinafter contained;

recites that the notes agreed to

DEED OF COMPOSITION BETWEEN DEBTORS AND CREDITORS.

ance of the said agreement, the said [*debtors*] have this day given to the said several persons parties hereto of the first part, such promissory notes as were so lately agreed to be given to them on account of their said respective debts, as hereinbefore is mentioned, as they the said several persons, parties hereto of the first part, do hereby respectively admit and declare: NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, THEY the said several persons, parties hereto of the first part, do hereby for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and their several and respective partner and partners, (and not one of them for the acts and deeds of the other or others of them, or for the acts and deeds of the heirs, executors, or administrators, or partner or partners of the others or other of them,) COVENANT, promise, and agree, with and to the said [*debtors*], and each of them, and their and each of their executors and administrators, that if the said promissory notes, so this day given to the said several persons, parties hereto of the first part, as hereinbefore is mentioned, shall be paid as and when the same shall respectively become due and payable, they the said several persons, parties hereto of the first part, or their respective partner or partners, or the executors or administrators of them, or their partner or partners respectively, shall and will accept and take the sums respectively secured by the same notes as aforesaid, in full satisfaction and discharge of the said debts or sums of money, set opposite to the respective names of the said parties hereto of the first part, in the said second column of the said schedule hereunder written or hereunto annexed; *And* at the request and expense of the said [*debtors*], their respective executors or administrators, well and effectually release and for ever discharge the said [*debtors*], and each of them, and their and each of their executors and administrators, of and from the same debts or sums of money, and all actions, suits, claims, and demands whatsoever, for or on account of the same; *And* that in the mean time, and until such releases as aforesaid shall be executed, or default shall be made in payment of some or one of the said promis-

be given have been given accordingly.

Witnessing part.

The creditors covenant with the debtors, that if the notes are paid they will accept the sums thereby secured in satisfaction of their debts;

and will release the debtors therefrom;

and that until default shall be made in payment of the notes, the cre-

DEED OF COMPOSITION BETWEEN DEBTORS AND CREDITORS.

sory notes so this day given as aforesaid, they the said persons, parties hereto of the first part, or their respective partner or partners, or the executors or administrators of them, or their partner or partners respectively, shall not

ditors will not sue the debtors;

nor will, by themselves, or any other person or persons acting under their authority or with their consent, commence or prosecute (*a*) any action or actions, or suit or suits at law or in equity, against the said [*debtors*], or either of them, or their or either of their executors or administrators, or make any attachment upon their or either of their estate and effects, for or by reason of the said debts so due and owing to them the said several persons, parties hereto of the first part, from the said [*debtors*] as aforesaid, or for or on account of any matter or thing in anywise relating thereto; *And* that if any action, suit, attachment, claim, or demand shall be commenced or made against or upon the said [*debtors*], or either of them, or their or either of their executors or administrators, in opposition to, or in violation of, the aforesaid covenants and agreements, or any or either of them, *Then*, and in every such case, these presents, and the covenants and agreements hereinbefore contained, shall and may be pleaded in bar thereto; *And* the said [*debtors*], and each of them, and their and each of their executors and administrators, shall thenceforth be absolutely released and discharged of and from

and that if any action, &c. shall be brought contrary to this agreement, this covenant may be pleaded in bar thereto;

As to the effect of a covenant not to sue.

(*a*) A general covenant 'not to sue,' will (to avoid a circuity of action), operate as a release of the obligation; but a covenant not to sue for a particular time will not have that effect. See *Dean* v. *Newhall*, 8 T. R. 168. In *Lacy* v. *Kynaston*, 12 Mod. 551., a distinction was taken between a covenant not to sue a sole obligor, and one of several obligors; for it was there held that "if A. is bound to B., and B. covenants never to put the bond in force against A., and afterwards sues A. on the bond, A. may plead the covenant by way of release; but that if A. and B. be jointly and severally bound to C. in a given sum, and C. covenants with A. not to sue him, such covenant shall not be construed as a *release*, but as a covenant only; for C. does not covenant not to sue B., but merely that he will not sue A." See also *Hutton* v. *Eyre*, 6 Taunt. 289. If, however, an obligee covenant not to sue an obligor before a certain day, and that if he shall do so, the obligor may plead the agreement in bar thereto, and as an acquittance, this will operate as a suspension of the obligation, and consequently as a release. See 1 Roll. Abr. 939, L. pl. 2.

DEED OF COMPOSITION BETWEEN DEBTORS AND CREDITORS.

the debt or sum for or in respect of which such action, suit, attachment, claim, or demand as aforesaid shall for the time being be commenced or made; *And further*, that they the said several persons, parties hereto of the first part, their heirs, executors, or administrators, shall and will, from time to time, and at all times hereafter, indemnify and keep harmless the said [*debtors*], and each of them, and their and each of their heirs, executors, or administrators, and their and every of their estate and effects, from and against the payment of the several sums of money mentioned and set forth in the third column of the said schedule hereunder written or hereunto annexed, and for which the acceptances of the said [*debtors*] have been so given, as hereinbefore is mentioned and recited, and from and against all actions, suits, losses, costs, charges, and expenses which they the said [*debtors*], or either of them, or their, or either of their executors or administrators, shall or may be involved in, incur, sustain, or be put unto, for or by reason of the said last mentioned sums of money, or any of them, or for or by reason of any matter or thing in anywise relating thereto: PROVIDED ALWAYS, and it is hereby expressly agreed and declared, between and by the parties hereto, that if at any time before the said promissory notes, so this day given by the said [*debtors*] to the said several persons, parties hereto of the first part as aforesaid, shall be fully paid and discharged, the said [*debtors*] shall be duly found and declared bankrupts, *Then*, and in such case, the several covenants and agreements hereinbefore contained on the part of the said several persons parties hereto of the first part, shall absolutely cease, determine, and be void, and the several persons parties hereto of the first part, their respective partner or partners, or the executors or administrators of them, or their partner or partners respectively, shall have a right, and be at full liberty to prove the said several and respective debts or sums due and owing to them respectively by the said [*debtors*] as aforesaid, or so much and such parts thereof respectively as shall then remain unsatisfied and undischarged, anything hereinbefore contained to the contrary thereof in any wise notwithstanding. IN WITNESS, &c.

and that they will indemnify the debtors against the amount of their acceptances as mentioned in the third column of the schedule.

Proviso that if the debtors are found bankrupts before the notes are paid, the creditors may prove for so much of their debts as they may not have then received.

(*Here add the Schedule*).

ASSIGNMENT OF STOCK IN TRADE, &C. FOR CREDITORS.

ASSIGNMENT *of* STOCK *in* TRADE, *Debts, and other Effects, to* TRUSTEES *for the Benefit of* CREDITORS (*a*).

Parties.

THIS INDENTURE, made the day of , 18 ; BETWEEN [*debtor*] of, &c. of the first part; [*one trustee*] of, &c. [*another trustee*] of, &c. and [*third trustee*] of, &c. (three of the creditors of the said [*debtor*]), of the second part; and the several other persons whose names and seals are hereunto subscribed and affixed by themselves or their several attornies, (being also respectively creditors of the said [*debtor*]), of the third part; WHEREAS the said [*debtor*] is indebted to the several persons whose names are mentioned in the schedule hereunder written or hereunto annexed, in the several sums of money set opposite their respective names in the same schedule; AND WHEREAS the said [*debtor*], from various losses and disappointments in trade, is unable to pay the whole of his said debts, and being desirous of discontinuing the trade or business in which he is now engaged, and of making the best provision in his power for the payment of the same debts, it hath been proposed and agreed that he should assign his stock in trade, debts, and all other his personal estate and effects whatsoever and wheresoever (except as hereinafter is mentioned), unto the said [*trustees*], their executors, administrators, and assigns, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same; *And* that the said [*trustees*], and the said several persons, parties hereto of the third part, should execute the releases hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the pre-

Recites that debtor is indebted to the creditors in the several sums of money mentioned in the schedule.

That he is unable to pay them,—

that it hath been agreed that he should assign his stock in trade, debts, and effects, (except as after mentioned,) to the trustees, upon the trusts following,—

and that the creditors should release him.

Witnessing part.

(*a*) For practical directions in preparing deeds of this kind, the reader will please to refer to the Introductory Observations to this title.

ASSIGNMENT OF STOCK IN TRADE, &C. FOR CREDITORS.

mises, and of the sum of ten shillings, of, &c. by the said [*trustees*] to the said [*debtor*] paid at or before the sealing and delivering of these presents (the receipt whereof is hereby acknowledged); He the said [*debtor*] *Hath* granted, bargained, sold, assigned, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, and set over unto the said [*trustees*], their executors, administrators, and assigns, All the stock in trade, debts, goods, wares, merchandises, monies, and other personal estate and effects whatsoever and wheresoever (*b*), of or belonging or due or owing to him the said [*debtor*], (save and except his wearing apparel); *And* all the right, title, interest, property, claim, and demand whatsoever of him the said [*debtor*], in, to, or upon the same stock in trade, debts, goods, monies, and premises hereby assigned, or intended so to be, and every part thereof: To have, hold, receive, and take the said stock in trade, debts, goods, monies, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, unto the said [*trustees*], their executors, administrators, and assigns, *Upon trust*, that they the said [*trustees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, at such times, and in such manner as they or he shall in their or his discretion think best, absolutely sell and dispose of, collect, get in, and convert into money, the said stock in trade, debts, effects, and premises hereby assigned, or intended so to be; *And* do and shall pay and apply the money arising thereby in such manner as is hereinafter in that behalf mentioned; And the said [*debtor*] doth hereby irrevocably make, nominate and appoint, and in his place and stead, put the said [*trustees*], and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, to be the true and lawful attornies and attorney of the said [*debtor*], to ask, demand, sue for, recover, and receive of and from all and

The debtor assigns to the trustees all his stock in trade, debts, and effects.

Habendum to the trustees absolutely,

Upon trust that they shall, by sale or otherwise, convert the same into money, and apply it as after mentioned.

Power of attorney to the trustees to recover the stock, debts, and effects before assigned.

(*b*) In this case, all the creditors who could, individually or collectively, make the debtor a bankrupt, signed the deed of composition before the debtor executed it; otherwise a general assignment of the debtor's effects would have been objectionable, on the ground that it would have been an act of bankruptcy.

Genera lassignment an act of bankruptcy.

ASSIGNMENT OF STOCK IN TRADE, &C. FOR CREDITORS.

every persons and person, who are, is, or shall or may be liable to deliver or pay the same respectively, the said stock in trade, debts, goods, monies, and premises hereby assigned, or intended so to be, and every part thereof; *And* on delivery, or payment thereof, or of any part thereof respectively, to give, sign, and execute receipts, acquittances, releases, or other discharges for the same respectively; *And* on non-delivery or non-payment thereof, or of any part thereof respectively, to bring, commence, carry on, and prosecute any action, suit, or other proceedings whatsoever, for recovering and compelling the delivery or payment thereof respectively, which they or he shall think expedient and proper; *And* also to adjust, settle, compound, and compromise all accounts, reckonings, transactions, matters and things whatsoever, relating to the said stock in trade, debts, goods, monies, and premises hereby assigned, or intended so to be; *And* for all, or any of the purposes aforesaid, to use the name of the said [*debtor*]; *And* generally to do, execute, and perform any other act, deed, matter, or thing whatsoever, relative to the premises, as fully to all intents and purposes whatsoever, as the said [*debtor*] might or could do, in his own proper person, in case these presents had not been executed; *And* whatsoever the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall lawfully do, or cause to be done in or about the premises, the said [*debtor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, to allow and confirm:

Declaration that the trustees shall stand possessed of the monies which shall come to their hands, upon the trusts following, *viz.*;

AND IT IS HEREBY AGREED AND DECLARED between and by the parties hereto, that the said [*trustees*], their executors, administrators, and assigns, shall stand and be possessed of the said monies which shall come to their hands by virtue of these presents, upon the trusts, and subject to the provisoes hereinafter expressed and contained concerning the same (that is to say); *Upon trust*, that they the said trustees or trustee for the time being, *Do* and shall, with and out of the said monies, in the first place pay, satisfy, and discharge all the costs, charges, and expenses attending the preparing, engrossing, and executing

Upon trust, in the first place, to pay and discharge the expenses attending the execution of these presents;

these presents; *And* in the next place, retain and deduct thereout, and reimburse themselves and himself respectively, all such costs, charges, and expenses as they or he shall or may pay, incur, or sustain, or to which they or he shall become subject or liable in or about the management of the affairs of the said [*debtor*], or in or about the execution and performance of the said trusts hereby created, or in anywise in relation thereunto; *And* in the next place pay or cause to be paid, rateably and proportionably, and without any preference or priority, to the several persons parties hereto of the second and third parts, the several debts or sums of money set opposite to their respective names in the said schedule hereunder written or hereunto annexed; *And* lastly, do and shall pay or cause to be paid, the residue of the said monies (if any) which shall remain after answering the trusts and purposes aforesaid, unto the said [*debtor*], his executors, administrators, and assigns, for his and their own absolute use and benefit; AND the said [*debtor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT and agree with and to the said [*trustees*], their executors, administrators, and assigns, that he the said [*debtor*], his executors or administrators, shall not nor will, at any times or time hereafter, by himself or themselves, or by any agent or agents, receive or take into his or their possession, the stock in trade, debts, monies, goods, and effects hereinbefore assigned, or intended so to be, or any of them, or release or discharge the same or any of them, or release, discontinue, or become nonsuit in any action or suit, to be commenced or brought for the recovery of the same premises, or any of them, without the consent in writing of the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, for that purpose first obtained; nor commit or suffer any act, deed, matter, or thing whatsoever, whereby or by means whereof the said [*trustees*], or any of them, or their or any of their executors or administrators, shall or may be hindered or obstructed from receiving, collecting, or getting in all or any part of the said stock in trade, debts, goods, monies, and effects hereby assigned, or intended so to be, or from executing, performing, or exercising the several trusts, powers,

ASSIGNMENT OF STOCK IN TRADE, &C FOR CREDITORS.

and in the next place, to reimburse themselves the expenses they shall incur in the management of the affairs of the said debtor, or in the execution of the trusts;

and in the next place, to pay to the creditors rateably the several debts set opposite their names in the schedule; and to pay the residue of the said monies, if any, to the said debtor.

Debtor covenants with the trustees that he will not at any time hereafter, by himself or agents, receive or take possession of the stock, debts, and effects, hereinbefore assigned;

or become nonsuit in any action for recovering the same, without the consent of the trustees;

or commit or suffer any act or thing whereby the trustees may be prevented from receiving or getting any part of the same, or

ASSIGNMENT OF STOCK IN TRADE, &C. FOR CREDITORS.

and authorities hereinbefore declared and contained, or revoke or make void the said powers or authorities, or any of them; *But* on the contrary, that he the said [*debtor*], his executors and administrators, shall and will, at the expense of the said trust estate, monies, and premises, do and execute all such further reasonable acts and deeds as the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, and assigns of such survivor, or their or his counsel, shall advise and require to be done and executed, for the better and more speedily and effectually recovering, receiving, collecting, and getting in of the said stock in trade, debts, goods, monies, and other premises hereby assigned, or intended so to be, and every of them; and also give his assistance and use his best endeavours in the recovery, collection, and receipt of the same: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and of the assignment so made by the said [*debtor*] to the said [*trustees*] as aforesaid, and of the trusts and provisions hereinbefore declared and contained, THEY the said several persons, parties hereto of the second and third parts, do hereby for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and their several and respective partner and partners, release, acquit, and for ever discharge the said [*debtor*], his heirs, executors, and administrators, of and from the said debts or sums of money set opposite to the respective names of them the said parties hereto of the second and third parts in the said schedule hereunder written or hereunto annexed, and all other the debts or sums of money (if any) to them or any of them respectively now due and owing, from or by the said [*debtor*]; *And* also of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for or in respect of the said debts or sums, or any of them, or any matter or thing in anywise relating thereunto: PROVIDED ALWAYS, and it is hereby further agreed and declared, that nothing herein contained shall extend to prevent the said several persons, parties hereto of the second and third parts, or any of them, or their or any of their partners or partner, or the executors, administrators, or assigns of them, or any

from executing the several trusts hereinbefore contained;

but that he the said debtor, will execute all such further acts as the trustees, or their counsel, may require.

Second witnessing part.

The creditors, in consideration of the aforesaid assignment, acquit and discharge the debtor from the debts owing to them, by him, and from all other claims whatsoever;

and from all actions, claims, and demands in respect thereof.

Proviso that nothing herein contained shall prevent the creditors from suing any persons besides the debtor, who shall be liable

ASSIGNMENT OF STOCK IN TRADE, &C. FOR CREDITORS.

of them, or of their or any of their partners or partner, from suing or prosecuting any person or persons (*c*), other than and besides the said [*debtor*], or his heirs, executors, or administrators, who is or are, or shall or may be liable to the payment of the said several debts or sums of money, or any of them: PROVIDED ALWAYS, and it is hereby lastly agreed, that the said trustees or trustee for the time being, shall be chargeable only for such monies as they or he shall actually receive by virtue of these presents, and any one or more of them shall not be answerable for the other or others of them, or for any involuntary losses; *And* that the said trustees or trustee for the time being, shall be indemnified by and out of the said trust monies and premises, against all losses, costs, and expenses, which they or he shall incur, or be subject or liable to in the execution of the trusts hereby created, or in consequence of acting under and by virtue of these presents. IN WITNESS, &c.

to the payment of the debts.

Clause for the indemnity of the trustees.

The Schedule referred to in and by the above written Indenture.

Schedule.

Names of Creditors.	Column for Seals.	Amount of Debts.	Names of Creditors.	Column for Seals.	Amount of Debts.
		£. s. d.			£. s. d.
E. F., A. B.,		524 1 8	Y. Z. & Y. Z.		200 0 0
C. D., and Co.		491 3 9	Z. Y.		176 14 0

(*c*) This provision is very proper where the creditors covenant *not to sue* the debtor; but the propriety of its insertion in this deed, where the creditors actually and formally *release* the debtor, seems questionable. See note (*a*) *ante*, *p.* 488, and Selw. N. P. p. 574, 6th ed.

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

DEED *of* COMPOSITION *between a Debtor and his Creditors, where the Composition was payable by* FIVE *Instalments, and the last of them was secured by the joint Notes of the* DEBTOR *and* TWO SURETIES, *and the* CREDITORS *entered into Covenants to accept the Composition if duly paid, and to execute Releases, and in the mean time not to arrest or disturb the Debtor; and where the Debtor assigned to the Sureties by way of Indemnity, the Leasehold Premises in which he carried on his Business, with* SPECIAL *Powers and Provisions for Sale, and for effecting an* INSURANCE *on his Life; and where full* POWER *over the Business and* STOCK *in* TRADE *of the Debtor, was vested in the Sureties until all the Instalments should be paid* (*a*).

Parties.

THIS INDENTURE, made the day of , in the year of the reign of our Sovereign Lord George the Fourth of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth, and in the year of our Lord Christ 182 , BETWEEN [*debtor*] of, &c. linen draper, of the first part; [*one surety*] of, &c. and [*other surety*], of, &c. (two of the creditors of the said [*debtor*]), of the second part; and the several persons (except the said [*sureties*]), whose names are mentioned in the schedule hereunder written or hereunto annexed, (being respectively creditors of the said [*debtor*]), of the third part: WHEREAS by an indenture of lease, bearing

Recital of a lease to G. H.;

(*a*) This precedent will be chiefly useful where the primary object is to secure the sureties. It is probable, that in this case it was expected that by the sale of the stock in trade, and by the getting in of the outstanding debts, the debtor would be provided with money to pay the notes given for the first four instalments of the composition-money as they became due; and that a sale of the leasehold premises and furniture would not, in fact, become necessary.

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

date the day of , 18 , and made between [E. F.], merchant, of the one part, and [G. H.], shoemaker, of the other part, a messuage or tenement and premises therein described, and therein mentioned to be situate in Street, in , with the appurtenances, were demised by the said [E. F.] unto the said [G. H.], his executors, administrators, and assigns, for the term of years from the day of then next, at the yearly rent of pounds, and subject to the covenants therein contained, on the lessee's part to be performed; AND WHEREAS by an indenture of assignment, bearing date the day of , and made, &c. (*recite an assignment from the said* [G. H.], *to the said* [*debtor*]); AND WHEREAS the said [*debtor*] is engaged in carrying on the trade or business of a linen draper, at or upon the messuage or tenement and premises hereinbefore mentioned; *And* his stock in trade, household furniture, and other effects in, upon, and about the same messuage or tenement and premises, are of considerable value; AND WHEREAS the said [*debtor*] is indebted to the several persons whose names are mentioned in the schedule hereunder written, in the several sums of money set opposite to their respective names in the same schedule; AND WHEREAS the said [*debtor*] has offered to his said creditors, a composition of fifteen shillings in the pound, on the amount of their said respective debts, to be paid by five several instalments, as follows, (that is to say); the first instalment to be for a sum equal to three shillings and sixpence in the pound on the said debts, payable at the end of three calendar months from the date hereof; the second, third, and fourth instalments to be respectively for a sum equal to three shillings in the pound on the said debts, and to be respectively paid at the end of six, nine, and twelve calendar months from the date hereof; and the fifth instalment to be for a sum equal to two shillings and sixpence in the pound on the said debts, and to be paid at the end of fifteen calendar months from the date hereof; *And* it hath been proposed and agreed, that the first four instalments of the said composition should be secured by the promissory notes of the said [*debtor*], payable at the times aforesaid, and it is expected that the said [*debtor*] will be

of an assignment of it from G. H. to the debtor;

that the debtor carries on the business of , at or upon the premises, and that his stock in trade, &c. is of considerable value;

that the debtor is indebted to the parties whose names are mentioned in the schedule, in the sums therein mentioned;

that the debtor has offered a composition of 15*s.* in the pound to his creditors, to be paid by five instalments,

the first four to be secured by the notes of the debtor,

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

enabled from the profits of his said business, and by the sale of his stock in trade, to pay and discharge the said notes as the same shall become due, *And* it hath been proposed and agreed that the fifth instalment of the said composition, as to the debts due from the said [*debtor*] to the said trustees, should be secured by the promissory notes of the said [*debtor*], payable at the time aforesaid; *And* that the fifth instalment of the said composition, as to the debts due to the said several other persons whose names are mentioned in the said schedule hereunder written, should be secured by the joint promissory notes of the said [*debtor*] and [*sureties*], payable at the time hereinbefore mentioned; *And* it hath also been proposed and agreed, that for the purpose of providing a fund for the payment of the notes by which the said last mentioned instalment of the said composition should be secured, and also for indemnifying the said [*sureties*] against all losses they may, or otherwise might, sustain through having joined in such notes as aforesaid, the said leasehold messuage or tenement and premises, comprised in and demised by the said hereinbefore recited indenture of lease as aforesaid, and their appurtenances, together with the fixtures and household goods and furniture in and about the same, should be respectively assigned to the said [*sureties*], upon the trusts, and in the manner hereinafter mentioned or referred to; AND WHEREAS, in pursuance and part performance of the said agreement, the said [*debtor*] hath given to the several persons whose names are mentioned in the schedule hereunder written, his promissory notes for securing the payment, at the times and in manner hereinbefore mentioned, of the first four instalments of such composition as aforesaid, and hath also given to the said [*sureties*] his promissory notes, for securing the payment of the fifth instalment of the said composition on their said respective debts, at the time hereinbefore mentioned; *And* in pursuance and further performance of the said agreement, the said [*debtor*] and [*sureties*] have given to the said several persons whose names are mentioned in the said schedule hereunder written (except the said [*sureties*]), their joint promissory note for securing the payment to them respectively of the fifth instalment of such composition as aforesaid, on their said respective debts, at the time hereinbefore in that behalf

and the last of them to be secured by the joint notes of the debtor and sureties.

And that for providing a fund for payment of the last-mentioned notes, it has been agreed that the leasehold premises, &c. should be assigned to the sureties upon trust as after mentioned.

That the debtor has given his notes for the payment of the first four instalments;

that the debtor and trustees have given their notes for the payment of the last instalment;

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

mentioned; AND WHEREAS, in pursuance and further performance of the said agreement, by an indenture bearing even date with these presents, and made, or expressed to be made, between the said [*debtor*], of the one part, and the said [*sureties*], of the other part, the said messuage or tenement and premises comprised in and demised by the therein and hereinbefore recited indenture of lease as aforesaid, and their appurtenances, and also the fixtures, household goods and furniture, and other articles and things in and about the same, and which are particularly mentioned and set forth in the schedule to the said indenture now in recital annexed or underwritten, have been assigned by the said [*debtor*] unto the said [*sureties*], their executors, administrators, and assigns, upon the trusts in the said indenture now in recital declared concerning the same, and hereinafter mentioned, (that is to say); *If* the said [*debtor*], his heirs, executors, administrators, or assigns, shall, on or before the day of now next ensuing, well and truly pay to the said [*sureties*], their executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain and Ireland, (being the amount of the several sums secured by the said joint promissory notes, which have been so given by the said [*debtor*] and [*sureties*], as therein and hereinbefore is mentioned); *Then* and in such case, upon trust to re-assign the said messuage or tenement, furniture, and premises, comprised in and assigned by the said indenture now in recital, and their appurtenances, unto the said [*debtor*], his executors, administrators, and assigns; *But* if default shall be made in payment of the said sum of pounds, or any part thereof, on or at the day or time aforesaid, *Then* upon trust to sell and dispose of the said messuage or tenement, furniture, and premises, as in the said indenture now in recital is mentioned, *And* out of the monies arising thereby, after discharging the costs and expenses of or attending the said sale, to retain or pay the said sum of pounds thereby secured, and to pay the surplus or residue of the said monies (if any) unto the said [*debtor*], his executors, administrators, and assigns; *And* by the said indenture now in recital it is declared, that the said [*sureties*], their executors, administrators, or assigns,

That by an indenture of even date the leasehold premises and fixtures have been assigned to the trustees;

Upon trust to re-assign, if the last-mentioned notes are paid,

but otherwise, to sell the premises, and out of the monies to retain and pay the residue, if any, to the debtor;

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

shall apply the said sum of pounds thereby secured, in payment and discharge of the said joint promissory notes, which have been so given by the said [*debtor*] and [*sureties*], as therein and hereinbefore is mentioned, as and when the same shall become due, and subject thereto shall be possessed thereof, *In trust* for the said [*debtor*], his executors, administrators, and assigns; AND WHEREAS the said messuage or tenement, furniture, and premises, comprised in and assigned by the said lastly hereinbefore recited indenture as aforesaid, have been assigned to the said [*sureties*], by a separate deed, in order that the said [*sureties*] may be enabled to make a title to the said premises without the intervention of these presents, and without exposing to the purchaser or purchasers of the said premises this present arrangement; AND WHEREAS the said parties hereto have respectively agreed to enter into the several covenants hereinafter on their parts contained: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said lastly recited agreement, HE the said [*debtor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*sureties*], and each and every of them, and their respective executors and administrators, and also with and to the said several persons, parties hereto of the third part, and each and every of them, and their respective executors and administrators, in manner following, (that is to say); that he the said [*debtor*], his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid the said several promissory notes, which have been so given by him the said [*debtor*] to the said several other persons, parties hereto as aforesaid, and also the said joint promissory notes which have been so given by the said [*debtor*] and [*sureties*] to the said several persons, parties hereto of the third part, as hereinbefore is mentioned, as and when the same several notes shall respectively become due and payable; *And also* that he the said [*debtor*], his heirs, executors, and administrators, shall and will from time to time, and at all times hereafter, well and effectually save, defend, keep harmless, and indemnified the said [*sureties*], and each of them, and their and each of their heirs, executors, and administrators, and their and each of their estates and effects whatsoever and wheresoever,

that the leasehold premises have been assigned by a separate deed, in order that the arrangement need not appear on the title. And that the parties have agreed to enter into the covenants after contained.

First witnessing part. The debtor covenants with the sureties and the other creditors,

that he will pay the notes as they become due;

and indemnify the sureties against the notes in which they joined;

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

from and against all actions, suits, sums of money, losses, damages, costs, charges, and expenses whatsoever, which they the said [*sureties*], or either of them, or their or either of their heirs, executors, or administrators, shall or may be involved in, pay, incur, sustain, expend, or be put unto, for or by reason or on account of the said joint promissory notes which have been so given by the said [*debtor*] and [*sureties*] as hereinbefore is mentioned, or any of them, or for or by reason, or on account of any matter, cause, or thing whatsoever in anywise relating thereto; *And further*, that he the said [*debtor*] shall and will, at the request of the said [*sureties*], or either of them, or their or either of their executors or administrators, attend and appear in person at any office or offices of insurance in London or Westminster, in order that the said [*sureties*], or either of them, or their or either of their executors or administrators, may insure the life of the said [*debtor*], in any sum or sums of money not exceeding pounds, and for any time or period not exceeding years, as they or he may think proper; *And* that he the said [*debtor*], shall and will well and truly pay, or cause to be paid, the premium or premiums which shall be payable for such insurance as aforesaid, as and when the same shall become payable; *And* that in case the said [*debtor*] shall at any time neglect or refuse to appear at such office, or pay such premium or premiums as aforesaid, it shall be lawful for the said [*sureties*], or either of them, or their or either of their executors or administrators, to effect an insurance on the life of the said [*debtor*], to the extent and in manner aforesaid, and with and out of the monies which shall come to their or his hands or hand, by virtue of the trusts of the said lastly hereinbefore recited indenture, to pay or retain and satisfy the premium or premiums, costs, charges, and expenses, which shall be payable for or on account of such insurance; *And further*, that in case the said messuage or tenement, and leasehold premises, comprised in and assigned by the said lastly hereinbefore recited indenture as aforesaid, shall be sold, under the trusts therein for that purpose contained, he the said [*debtor*], his executors or administrators, shall and will, at the request of the said [*sureties*], or either of them, or

and, on request, attend at an insurance office to enable the sureties to effect an insurance on the life of the debtor to the extent of —*l.*

and pay the premiums thereon;

with power to the sureties to do so, in case of his neglect or refusal;

that if the leasehold premises are sold the debtor will, on request, remove the stock in trade thereon,

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

their or either of their executors or administrators, remove and take and carry away, from and out of the said messuage or tenement and premises, all the stock in trade and other things which shall be then in, upon, or about the same messuage or tenement and premises, and not included or comprised in the schedule annexed to the said last mentioned indenture; *And* shall and will peaceably and quietly leave the said messuage or tenement and premises, and give up possession thereof, to the purchaser or purchasers of the same; *And also* that if the said [*debtor*], his executors or administrators, shall for the space of five days neglect or refuse to perform the said last mentioned covenant, it shall be lawful for the said [*sureties*], or either of them, or their or either of their executors or administrators, to remove such stock in trade and other things as aforesaid, from off the said premises, to any convenient place or places in the neighbourhood, and to defray the expenses of such removal by the sale of a sufficient part of the said stock in trade; *And further*, that he the said [*debtor*] shall and will from time to time, and at all times hereafter, until the several promissory notes hereinbefore mentioned shall be fully paid and satisfied, keep or cause to be kept, proper books of account relating to his trade, estate, and effects, and make or cause to be made therein, true and proper entries of all receipts, payments, disbursements, and other outgoings, and all other transactions, matters, and things whatsoever concerning the same, in such manner as is usual with persons engaged in the trade or business of a linen draper, or which shall be requisite or proper to elucidate or shew forth at all times the state and condition of his said trade, estate, and effects, in a clear and satisfactory manner; *And also* shall and will from time to time, and at all or any reasonable times and time, permit and suffer the said [*sureties*], and each of them, and their and each of their executors or administrators, at their or his own free will and pleasure, to inspect and examine the said books of account, and all other books, papers, and writings, in the custody or power of the said [*debtor*], in any wise relating to his said trade, estate, and effects; *And further*, that the said [*debtor*] shall and will conduct and carry on his said trade or business, and sell,

with power to the sureties to remove it in case of his neglect or refusal for the space of five days, and to defray the expenses of such removal by sale of part of the stock in trade;

that until the promissory notes are paid, the debtor will keep proper books of account, and allow the sureties to inspect them;

and that the debtor will carry on the

dispose of, collect, and get in his said stock in trade, debts, and effects, under the superintendence, and subject to the control of the said [*sureties*], and the survivor of them, and their or his executors or administrators; *And* shall and will employ such shopmen, clerks, and other persons, in the management and carrying on of his said trade or business, and in collecting his said debts and effects, as the said [*sureties*], or the survivor of them, or their or his executors or administrators, shall nominate or approve of in that behalf; *And* that in case the said [*debtor*] shall at any time act contrary to, or infringe the said last mentioned covenants and agreements, it shall be lawful for the said [*sureties*], or the survivor of them, their or his executors or administrators, to enter into and upon the said premises, and put out and expel the said [*debtor*] and all other persons therefrom; *And* to employ such shopmen, clerks, and other persons, to carry on the said business, and sell, collect, and get in the said stock in trade, debts, and effects, as they or he shall think fit, and upon such terms and conditions, as they or he shall deem reasonable; *And* to apply the monies which shall arise or be received by carrying on the said business and collecting and getting in the said debts and effects, as last aforesaid, and which shall remain after discharging the costs and expenses incurred in relation thereunto, in payment of the said promissory notes which have been so given by the said [*debtor*], to the said parties hereto of the second and third parts, as hereinbefore is mentioned, as the same notes shall respectively become due and payable: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said lastly recited agreement, THEY the said several persons, parties hereto of the second and third parts, *Do* hereby for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and their several and respective partner or partners, and not one of them for the acts and deeds of the others or other of them, or of the heirs, executors, administrators, or partner or partners of the others or other of them, COVENANT, promise, and agree, with and to the said [*debtor*], his executors and administrators, that in the mean time, and until the said

trade under the superintendence of the sureties.

with power to the sureties to carry on the trade if the debtor shall break the last mentioned covenants.

Second witnessing part.

The parties of the second and third parts covenant with the debtor, that until the notes become due they will not sue or molest him;

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

promissory notes so respectively given to the said several persons, parties hereto of the second and third parts, as aforesaid, shall severally and respectively become due and payable, they the said several persons, parties hereto of the second and third parts, or their respective partner or partners, or the executors or administrators of them, or their partner or partners respectively, shall not nor will sue or prosecute the said [*debtor*], either at law or in equity, for the said several debts or sums so due and owing to them from the said [*debtor*], as aforesaid, or for any of the said debts or sums, or any part thereof respectively;

and that if the notes are paid, they will accept the money paid on account of them in full discharge of their respective debts;

And that if the said promissory notes so respectively given to the said several persons, parties hereto of the second and third parts as aforesaid, shall be duly paid when and as the same shall severally and respectively become due and payable, or within ten days after the same shall become due and payable, *Then*, and in either of the said cases, they the said several persons, parties hereto of the second and third parts, or the executors or administrators of them, or their respective partner or partners, shall and will accept and take the sums which shall be received upon, or on account of the said promissory notes so respectively given to them as aforesaid, in full satisfaction and discharge of the said several and respective debts or sums of money so due and owing to them respectively from the said [*debtor*] as hereinbefore is mentioned;

and at the request of the debtor, execute proper releases;

And shall and will, at the costs and charges of the said [*debtor*], his executors or administrators, execute all such releases and discharges for the said debts or sums as he the said [*debtor*], his executors or administrators, shall reasonably require:

Proviso that if default shall be made in payment of the notes, the debtor shall pay the whole of the debts in respect of which such default shall be made.

PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that if default shall be made in payment of the said promissory notes so respectively given to the said several persons, parties hereto of the second and third parts as aforesaid, or any of them, for the space of ten days next after the same shall severally and respectively become due and payable, *Then*, and in every or any of the said cases, and immediately after any such default as aforesaid shall be made, he the said [*debtor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid unto the

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

person or persons for the time being entitled thereto, the debt or sum in respect of which such default as last aforesaid shall have been made, or so much and such part or parts thereof as shall then remain unsatisfied and undischarged: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that notwithstanding any thing in the lastly hereinbefore recited indenture contained to the contrary, the said [*sureties*], their executors, administrators, or assigns, shall not, under the trusts therein contained, sell or dispose of the said messuage or tenement, furniture and premises therein comprised, and thereby assigned as aforesaid, without or against the consent of the said [*debtor*], for the space of eight calendar months, to be computed from the day of the date hereof, provided the said [*debtor*] shall so long live, and shall in the mean time duly pay such of the said promissory notes so given by him as aforesaid, as shall from time to time become due and payable: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said [*debtor*] shall depart this life within the said space of eight calendar months, to be computed as aforesaid, *Or* shall not within that time obtain a purchaser or purchasers of the said messuage or tenement, furniture and premises, to the satisfaction of the said [*sureties*], or the survivor of them, or their or his executors or administrators, *Or* shall make default in payment of any of the said promissory notes so respectively given by him as aforesaid, as and when the same shall become due, *Then*, and in any of the said cases, the said [*sureties*], or the survivor of them, or the executors, administrators, or assigns of such survivor, shall and may at any time thereafter, proceed to a sale of the said messuage or tenement, furniture, and premises, and every of them, and sell and dispose thereof to any person or persons whomsoever, for such price or prices as can be reasonably obtained for the same, and the consent or concurrence of the said [*debtor*], his executors, administrators, or assigns, to or in such sale or sales, shall not be in anywise requisite or necessary; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the said [*sureties*], their executors, administrators, and assigns, shall stand and

Proviso that the sureties shall not sell the leasehold premises against the debtor's consent for eight months, if the debtor so long lives, and pays the notes which in the mean time shall become due.

Proviso that if the debtor dies within the eight months, or makes default in payment of the notes, the sureties may sell immediately, and without his further concurrence.

Declaration of trust of the monies which may be received on any insurance on the debtor's life.

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

be possessed of and interested in the monies which shall be recovered or received from or by virtue of any such insurance on the life of the said [*debtor*] as aforesaid, *Upon* and for such and the same trusts, intents, and purposes, as in and by the said lastly hereinbefore recited indenture are expressed and declared of and concerning the monies which shall arise from the sale of the said messuage or tenement, furniture, and premises therein comprised and thereby assigned, as hereinbefore is mentioned, or as near thereto as circumstances will permit: AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by the said parties hereto, that the monies which shall be received by the said [*sureties*], or either of them, or the executors, administrators, or assigns of them, or either of them, by virtue of the said lastly herein before recited indenture, and these presents, or either of them, shall, until the same shall be wanted for the purposes hereinbefore mentioned or referred to, be laid out and invested in exchequer bills or other government securities; *And* that the exchequer bills or other securities in which the same shall be so laid out or invested, shall be deposited for safe custody in the banking house of Messrs. and Company, of , in the names and to the account of the said [*sureties*], or the survivor of them, or the executors or administrators of such survivor: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that it shall be lawful for the said [*debtor*] and his family, servants, and shopmen, to reside in, occupy, possess, and enjoy the said messuage or tenement and leasehold premises comprised in and assigned by the said lastly hereinbefore recited indenture as aforesaid, and to continue to carry on therein the said trade or business of a linen draper, until the same messuage or tenement and premises shall be sold under the trusts and provisions therein contained and hereinbefore mentioned; *But* that the said [*sureties*], and the survivor of them, and their or his executors, administrators, or assigns, shall nevertheless have full and free liberty and authority, at all reasonable times in the day-time, to enter into and upon the said messuage or tenement and premises, and every or any part thereof, for the purpose of seeing that the said furni-

Proviso that until the trust monies are wanted, they shall be invested in exchequer bills.

Proviso that until the leasehold premises are sold, the debtor may reside therein and carry on his business;

but that the sureties may enter to inspect the books, and see the furniture, &c.

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

ture, fixtures, articles, and things comprised in and assigned by the said lastly hereinbefore recited indenture as aforesaid, are not injured, removed, or destroyed; *And also* for the purpose of inspecting the books of account of the said [*debtor*], and superintending the management and carrying on of his affairs and trade or business and concerns, as hereinbefore is mentioned; (*Proviso that if the debtor becomes bankrupt, the creditors may prove for the whole amount of their debts, as ante, p.* 489); AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by the said parties hereto, and the said several persons parties hereto of the third part, *Do* hereby for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and their several and respective partner or partners, and not one of them for the acts and deeds of the others or other of them, or for the acts and deeds of the heirs, executors, or administrators, partner or partners of the others or other of them, COVENANT, promise, and agree with and to the said [*sureties*], and each of them, and their and each of their executors and administrators, that in case a commission of bankruptcy shall be issued against the said [*debtor*], and he shall be thereupon found a bankrupt, and the said messuage or tenement, furniture, and premises comprised in and assigned by the said lastly hereinbefore recited indenture as aforesaid, or any part thereof, shall be sold by the assignees under the said commission, *Then* and in such case, they the said several persons parties hereto of the third part, or their respective partner or partners, or the executors or administrators of them or their partner or partners respectively, shall and will, out of the monies they shall respectively receive from the estate of the said [*debtor*] by way of dividend on their said respective debts, so far as such monies shall arise from or be produced by the sale of the said messuage or tenement, furniture, and premises, but not further or otherwise, or out of any other monies, pay, or cause to be paid, to the said [*sureties*], or their respective executors or administrators, (so far as the same will extend,) the sum or sums of money which the said [*sureties*], or any of them, or their or any of their executors or administrators, shall pay for or on account

Covenant from the parties of the third part with the sureties.

that if the debtor becomes bankrupt, and the leaseholds, &c. are sold under the commission, they will, out of the dividends on their debts, pay to the sureties what they may have paid on the notes.

DEED OF COMPOSITION BETWEEN A DEBTOR AND HIS CREDITORS.

of the said promissory notes so respectively given by the said [*debtor*] and [*sureties*] to the said several persons, parties hereto of the third part as aforesaid: PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by the said [*sureties*], that all sum and sums of money, losses, costs, damages, and expenses whatsoever, which shall be paid, incurred, or sustained by them the said [*sureties*], or either of them, or their or either of their executors or administrators, or the estate or effects of them, or any of them, for or in respect of the said promissory notes so given by the said [*debtor*] and [*sureties*] to the said several persons parties hereto of the third part as aforesaid, or any of them, and which shall not be paid under the trusts in these presents, and the said lastly hereinbefore recited indenture declared and contained, shall be paid and borne by them the said [*sureties*], or their respective executors or administrators, in equal shares and proportions. IN WITNESS, &c.

Proviso that all losses, &c. borne by the sureties shall be borne by them equally.

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

DEED *of* ARRANGEMENT *for winding up and settling, under the Care and Superintendence of* INSPECTORS, *the Affairs of* BANKERS *who had stopped Payment* (*a*).

THIS INDENTURE, made the day of , 18 , BETWEEN [*bankers*], of the first part; [*inspectors*], of the second part; and the several persons (creditors of the said bankers jointly, or of some or one of them separately) who by themselves, their partners, agents, or attornies, have subscribed their names and affixed their seals to these presents, or shall otherwise assent to the same, of the third part; WHEREAS the said [*bankers*] have carried on

Parties.

Recites that the bankers have

(*a*) The points which should be principally attended to in preparing deeds of this description, are noticed in the Introductory Observations to this title.

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

the business of bankers at , and elsewhere in the county of , under the firm of ; AND WHEREAS the said [*bankers*] are justly and truly indebted on their said partnership account, to the said several persons, parties hereto of the second and third parts, in several sums of money; *And* they are also severally indebted on their own private or separate accounts to several of the said persons, parties hereto of the second and third parts, in several other sums of money; AND WHEREAS the said [*bankers*] being at present unable to pay and discharge the full amount of the debts so owing by them as aforesaid, it was lately proposed, and after mature consideration agreed, by and between all the said parties to these presents, that the care and management of the joint estate and effects of the said [*bankers*] should be continued by them under the inspection and subject to the controul of the said [*inspectors*] (who have been appointed inspectors for that purpose), upon the terms, and subject to the powers, provisoes, covenants, agreements, and declarations hereinafter expressed, for the term of two years, to be computed from the date of these presents, and for such extended term and terms as shall be appointed by the inspectors for the time being under the power hereinafter for that purpose contained; *And* that all the separate freehold and copyhold estates of the said [*first named banker*], in the counties of , and , or either of them, and all his shares or sums in the public stocks or funds, and all his insurance shares and farming stock, and all the household furniture, chattels, and effects in and about his dwelling-house at , should be assured to the said [*inspectors*], *Upon trust* to sell and dispose of the same; *And* that all the separate freehold, copyhold, and leasehold estates of the said [*first named banker*], situate in the county of , or elsewhere, not being in the counties of and , or either of them, should be respectively assured to the said [*inspectors*], *Upon trust* to raise money thereon by way of mortgage, or by felling the timber and wood on the said freehold estates; *And* that the money to be produced from such sales or mortgages respectively, should be applied, in the first place, in the payment of all expenses attending the said sales and mortgages, and in the next

carried on business at ;

that they are jointly and separately indebted to the parties of the second and third parts;

that being unable to pay such debts, it has been agreed that the business should be carried on under the care of inspectors;

that the separate estates of the bankers should be also vested in the inspectors, in trust to sell, &c.

and that the produce should be applied as after mentioned;

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

place, in payment of all rent and taxes, and other annual outgoings in respect of the property so to be assured, and all interest due or to become due in respect of any mortgage debt or other incumbrance to which the said estates were or should become subject; *And* in the next place, in payment of the capital or principal of any mortgage debt or other incumbrance to which the said estates so to be sold as aforesaid were or should become subject; *And* that the clear surplus of the said money should be holden *In trust* for the said [*first named banker*]; *And* it was also proposed and agreed, that each of them the said [*the other bankers*] should convey and assure all his separate real and personal estates to the said [*inspectors*], *In trust* to sell and dispose of the same, and to apply the money to be produced therefrom, in the first place, in payment of the expenses of such sale, and then in satisfaction of all mortgages and other incumbrances (if any) affecting the same estates, and that the surplus of the said money should be holden in trust for the person from whose estates the same should have proceeded; *But* it was nevertheless at the same time proposed and agreed, that the surplus of the money to be produced from the separate estates of every of them the said [*bankers*], should be respectively applied to the purposes hereinafter expressed and contained of and concerning the same; *And* that a letter of license should be given to the said [*bankers*] by their creditors accordingly, subject to the provisoes and agreements hereinafter contained; AND WHEREAS in pursuance and part performance of the said agreements, the separate property of every of them the said [*bankers*] hath, by an indenture of release and assignment, bearing even date with these presents, and grounded, so far as the same is intended to operate as a release, upon an indenture of bargain and sale, or lease of possession, bearing date the next preceding day, been conveyed and assigned, or otherwise assured, unto and to the use of the said [*inspectors*], their heirs, executors, administrators, and assigns, according to the nature and quality thereof respectively, upon the trusts hereinbefore mentioned to have been agreed upon in regard to the same respectively: NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance

and that a letter of license should be given to the bankers;

and that the separate estates of the bankers have been conveyed to the inspectors in the manner agreed on;

First witnessing part.

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

The creditors grant to the bankers full license, &c. to manage their affairs under the inspection of the inspectors for two years.

of the said agreements, and in consideration of the covenants and agreements hereinafter contained by and on the part and behalf of the said [*bankers*], THEY the said [*inspectors*], and all other the creditors of the said [*bankers*] jointly, or of any of them separately, who now are, or hereafter shall become parties to these presents, and shall, by themselves or their partner or partners, or by any agent or agents by them respectively authorized, execute these presents or a duplicate of the same, or who shall signify their assent thereto, or according to the several limitations and provisions herein contained, accept of the benefit hereof, *Do*, and every of them *Doth*, by these presents, give and grant unto the said [*bankers*], and every of them, sure, full, and free liberty, license, and safe conduct, so far as they severally can or may do, to manage and transact their affairs and concerns, and to collect, get in, and dispose of all their joint estate and effects under the immediate direction and inspection of the said [*inspectors*], or other the inspectors for the time being acting in the execution of these presents, in such manner as they the said [*bankers*] shall judge to be most conducive to the benefit of their said creditors, from the day of the date of these presents, for the term of two years thence next ensuing, and fully to be complete and ended, and for such further term or terms as the inspectors for the time being, or any three of them shall, in pursuance of the power hereinafter for that purpose contained, appoint; AND every of the said creditors severally, for himself and herself, and his and her heirs, executors, administrators, partners, and assigns, *Doth* by these presents COVENANT, promise, grant, and agree to and with the said [*bankers*], and every of them, that they the said creditors, or any or either of them, or any other person or persons for them, or any or either of them, or by his, her, their, or any of their order, assent, consent, privity, or procurement, shall not sue, arrest, prosecute, molest, attach, detain, take in execution, or otherwise impede them the said [*bankers*], or any of them, or their goods, chattels, property, estate, or effects respectively, or any part thereof, in any manner howsoever, or upon any pretence whatsoever, during the said term of two years, or such further term or terms as aforesaid; *And* that if any of them the said

And covenant not to arrest, sue, or molest them for that time;

and that if any of the creditors should arrest or

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

creditors, or the partners or agents, executors, administrators, or assigns of any of them, shall so do, contrary to the true intent and meaning of these presents, *Then*, that they the said [*bankers*], their heirs, executors, and administrators, and every of them, shall be, and are, and is for ever, by these presents declared to be clearly acquitted, exonerated, and discharged of and from all actions, suits, debts, claims, and demands whatsoever, both at law and in equity, of the creditor or creditors, by whom the said [*bankers*], or any of them, or their or any of their goods, chattels, property, estate, and effects, or any part thereof, shall be sued, arrested, prosecuted, molested, attached, detained, taken in execution, or otherwise impeded as aforesaid, at any time from the date hereof, until the expiration of the said term of two years, or such further term or terms as aforesaid; *And* that this present letter of license shall and may be pleaded in bar to the said respective debts, and to any prosecution, suit, or action, that shall or may be brought against the said [*bankers*], or any of them, or against their or any of their goods, chattels, property, estate, or effects as aforesaid, within the time or respective times aforesaid, as effectually as if the said [*bankers*] respectively had a general release under the hands and seals of such creditor or creditors respectively; *And* for that purpose, these presents may be given in evidence, as a full and absolute acquittance and release for any such debt, prosecution, suit, or action: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreements, and in consideration of the premises, EVERY of them the said [*bankers*], so far as regards the acts and deeds to be done and executed or refrained from by himself, his heirs, executors, and administrators only, and not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*inspectors*], their executors and administrators, that they the said [*bankers*] shall and will forthwith cause to be made up a true and exact account in writing of all their joint and separate debts, estates, and effects, of what nature or kind soever, as well real as personal, and of the several charges, outgoings, and incumbrances, now affect-

molest the bankers, the bankers should be for ever discharged from the debts, in respect of which they should be so arrested or molested, and that this deed may be pleaded as a release;

Second witnessing part.

The bankers covenant with the inspectors, to make out a full account of all their joint and separate debts and effects;

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

ing the same; *And* shall and will forthwith deliver such account signed by them respectively, unto the said [*inspectors*], or other the inspectors for the time being; *And* that they the said [*bankers*], or such of them as shall be required by the said inspectors for the time being, shall and will during all the said term of two years, and all such further term and terms as aforesaid, if any such shall be appointed, (unless they shall be enabled sooner to pay off and discharge all their said debts,) manage and transact their affairs and business for the benefit of their said creditors, in the best manner they respectively are able to do; *And* shall and will submit all correspondence to the consideration, and observe, perform, fulfil, and execute, from time to time, all the orders, directions, resolutions, and instructions of the said [*inspectors*], or other the inspectors for the time being, or any three of them, (which they or any three of them are hereby authorised from time to time to make and give for that purpose,) touching the ordering, managing, and getting in and disposing of their estates and effects respectively; *And* shall and will use their best and utmost means and endeavours to collect and get in the same, and to discharge all and every the debts owing by them jointly, or any of them separately, in the manner hereinafter mentioned, as soon as may be; *And* for that purpose, that they the said [*bankers*] respectively shall and will remain and continue to reside within aforesaid, or at any convenient distance therefrom, to be approved of by the said [*inspectors*], or other the inspectors for the time being, or three of them; *And* shall not go to reside or continue at any other place or places, without the license and consent of the inspectors for the time being, or three of them, first had and obtained, unless in respect to every of them the said [*bankers*], he shall be required or directed by the inspectors for the time being, or any three of them, to go to any other place or places within his majesty's dominions, or on the continent of Europe, or America, or elsewhere, to take the care, conduct, and management of their affairs and concerns there, and for facilitating the winding up of the concerns; *And further*, that they the said [*bankers*], shall and will, from time to time, pay all the monies which they shall res-

and to deliver the same, duly signed, to the inspectors;

and during the two years, to manage their affairs for the benefit of the creditors to the best of their ability;

and to observe the orders, &c. of the inspectors;

and to get in the debts as soon as possible;

and to reside at ——, or within a convenient distance therefrom;

and to pay all the monies they shall receive into the Bank of England in the names of the inspectors;

and to keep the joint and separate accounts distinct;

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

pectively receive or get in, from the produce of their joint or separate estates and effects respectively, into the bank of England, in the names of the inspectors for the time being, to the end that the same may be by them distributed and divided unto and amongst the several creditors of them the said [*bankers*], according to their respective debts, in manner hereinafter mentioned; *And* to that intent the account of the produce of the joint estate and effects of them the said [*bankers*], shall be kept distinct from the account of the produce of the separate estates and effects of any one or more of them; *And* the account of the produce of the separate estate and effects of every of them shall be kept distinct from the accounts or account of the separate estate and effects of the others or other of them; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that all the monies arising by or from the joint or separate estates and effects of the said [*bankers*] respectively, and which shall be so paid into the bank of England by them respectively as aforesaid, shall there remain, and shall not be drawn out, except for the purposes hereinafter mentioned, unless the inspectors for the time being shall in the mean time think it will be for the benefit of the estate to lay out and invest the same in the purchase of government funds or exchequer bills, and which they are hereby empowered to do from time to time, when and so often as they shall think proper; *And* that all and every sums and sum of money to be taken out of the bank for any purpose whatsoever, shall be by drafts or checks to be signed by the inspectors for the time being, or by any person to be authorised by them; AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by the said parties hereto, and particularly every of them the said [*bankers*], *Doth* hereby COVENANT, promise, and agree, that the money so to be paid into the bank in the names and to the account of the inspectors for the time being, or the funds or securities in or upon which the same, or any part thereof, shall be invested, *And also* the surplus of the money to be produced by the separate real and personal estate of every of them the said [*bankers*], shall be respectively applied and disposed of in the manner hereinafter mentioned and ex-

Declaration that all monies paid into the bank shall remain there until wanted, unless drawn out by the inspectors.

Declaration that the money paid into the bank as aforesaid, and arising from the separate estate of the bankers, shall be applied as follows, *viz.*;

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

pressed, (that is to say); *In* the first place, in payment and satisfaction of all usual outgoings for rents, taxes, repairs, salaries of clerks and agents, and all such costs, charges, and expenses, as shall from time to time be incurred or sustained in the execution of the provisions of these presents, and in obtaining the consent to and execution of the same by the creditors, or otherwise incident to the said provisions respectively, *And also* the expenses which have been incurred in relation to the affairs of the said [*bankers*] since the day of , when they stopped payment, *And also* the expenses which have been incurred or shall be incurred preparatory to the execution of these presents, or in relation to the same, *And also* the expenses incident to the disposition, collection, and getting in of the said estates and effects respectively, or otherwise in relation thereto; *And* after payment and satisfaction of the same respectively, the clear residue of the produce of the partnership estate and effects of the said [*bankers*] shall, in the first instance, be applied in payment and satisfaction of the charges and incumbrances, if any, now specifically charged upon or affecting the same, or any part thereof, as or when the same shall become due or payable; *And* subject thereto, the said clear residue of the produce of the said partnership estate and effects, or a competent part thereof, shall be applied in payment of the debts owing by them the said [*bankers*] on their partnership account, to such of their partnership creditors respectively as have executed or shall execute these presents, or signify their assent thereto, or to their respective executors, administrators, or assigns, rateably, and in proportion to the amount of the debts owing to them respectively, without any priority or preference of any one or more of them, to any other or others of them, until every of the same creditors respectively, his or her executors or administrators, shall have received the full amount of the debts owing to him or her respectively; *And* that the surplus of the share of every of them the said [*bankers*], of and in the said clear residue of the produce of the said partnership estates and effects, shall be applied in or towards payment of so much and such part of his separate debts as shall not have been discharged out of the clear produce of his separate estate and effects, to such of his

in discharge of the expenses incident to the trust, and of preparing these presents;

then in discharge of any incumbrances affecting the said estate;

that the surplus of the co-partnership effects shall be paid to the partnership creditors rateably, until their debts are fully paid;

that the share of each partner in the surplus, shall be paid to his separate creditors rateably;

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

creditors as have executed or shall execute these presents, or signify their assent thereto, or to their respective executors, administrators, or assigns, rateably, and in proportion to the amount of the debts owing to them respectively, without any priority or preference of any one or more of them to the other or others of them, until every of the same creditors respectively, his or her executors or administrators, shall have received the full amount of the debts owing to him, her, or them respectively; *And* the residue or surplus (if any) of the produce of the separate estate of them the said [*bankers*], shall be applied in aid of the partnership fund for the payment of the partnership debts, until every of the said partnership creditors who have executed or shall execute these presents, or assent thereto, his or her executors or administrators, shall have received the full amount of the debts owing to him or her repectively; *And* afterwards, and in the next place, there shall be paid to every of them the said [*bankers*], his executors, administrators, or assigns, the ultimate surplus of the produce of his separate estate and effects, and also the ultimate surplus of his share of the produce of the said partnership estate and effects, subject neverthelesss as to both such ultimate surpluses, to the provisions hereinafter contained, (that is to say); in case any one or more of them the said [*bankers*] is, are, or shall become a creditor or creditors of the other or others of them, either by having paid, or by paying out of the produce of his separate estate and effects, or otherwise, debts, or the share of debts, payable by the other or others of them; *Then* and in that case, such of them the said [*bankers*] as shall be a creditor or creditors as aforesaid, his executors or administrators, shall be entitled to have and receive out of the surplus or residue which otherwise would have belonged to such of them as shall be debtors as aforesaid, the monies which shall be owing to the partner or partners who shall appear to be creditor or creditors as aforesaid of the person or persons so indebted as aforesaid; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said [*bankers*], that as well in respect of the partnership estate and effects, as to each partner's separate estate and effects, so soon as there shall be in the bank, in the names of the inspectors for the time being, funds applicable to

that the surplus of the separate estates shall be paid to the partnership creditors till they are fully paid;

that the surplus of the partnership estate, and of the separate estates, shall be paid to the bankers entitled thereto.

Agreement that a dividend shall be made when there are funds to pay 4*s.* in the pound;

the trusts and purposes of this present indenture, sufficient, after payment or making due provision for payment of all expenses and monies hereinbefore directed or authorised to be thereout paid or discharged, to pay to all the creditors, parties to, or who have assented to this present indenture, having an immediate claim on the same funds, a sum equal to four shillings in the pound on the amount of their respective debts, there shall be made a dividend of the same amongst the creditors immediately entitled to the payment of their debts thereout, who shall execute or accede to these presents, rateably, and in proportion to the amount of their respective debts, subject nevertheless to the several directions and provisions herein contained; *And* that the inspectors for the time being shall, from time to time, make a further dividend, when and so often as there shall be funds to be divided, and the inspectors for the time being shall think it proper that a dividend should be made, until all the creditors shall be paid the full amount of the debts due to them respectively, or until all the funds are exhausted, but without interest, subsequent to the said day of now last past; *And* that sufficient notice in the London Gazette, and in one morning and one evening daily newspaper, published in London or Westminster, and in the and newspapers, shall be given of the time and place of making and paying such respective dividends; PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the said [*bankers*], with the approbation of the inspectors for the time being, or any three of them, to pay in full all or such one or more of the separate or partnership creditors of them the said [*bankers*], where the debt of each such creditor shall not exceed the sum of fifty pounds, or where the creditor shall be willing to accept in full discharge of his debt, a sum not exceeding fifty pounds; PROVIDED ALSO, and it is hereby agreed and declared between and by the several parties hereto, that in case there shall be any debts or sums of money outstanding against the said [*bankers*], or any or either of them, upon any security or otherwise, not yet payable, it shall be lawful for the creditors, in respect of such debts or sums of money respectively, to execute these presents, and to receive a dividend or dividends thereupon, abating legal

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

and that a further dividend shall be made, as the inspectors think proper.

Power to pay debts not exceeding 50*l.* each, in full.

Provision that debts not yet payable, may be proved as in bankruptcy, abating legal discount.

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

discount for the time the same shall have to run, in the same manner as under a commission of bankrupt; PROVIDED FURTHER, and it is hereby also agreed and declared between and by all the parties to these presents, that in case it shall happen that any creditor or creditors of the said [*bankers*], or of any of them, shall, through inadvertency or otherwise, omit to sign and execute these presents, or a duplicate or duplicates thereof, or signify their assent thereto, before a first or other dividend or dividends shall be made, but shall afterwards execute the same, or signify their assent thereto, the inspectors for the time being shall and may pay or cause to be paid to such creditor or creditors so signing and executing, or signifying his, her, or their assent as aforesaid, a like dividend or dividends as shall have been paid to the said other creditors respectively who shall have before executed these presents (due regard being had to the nature of the debt or debts of the creditor or creditors who shall have omitted to execute these presents, or assent thereto, and to the fund or funds from whence the same ought to be paid), before any further dividend or dividends shall be made of the said estate and effects respectively; *But* nevertheless so as not to disturb any former dividend or dividends of the same, or to compel any or either of the creditors to refund or repay any dividend or dividends which he or they may have received; *And* from time to time after such last mentioned payment, the said inspector for the time being shall and may make all future dividends to all and every the creditors of the said [*bankers*], or of any of them, who shall have executed these presents, or signified their assent thereto, without any preference, in proportion to their several and respective debts, and with as much fairness and equality as may be, due regard being always had to the fund or funds from whence the same creditors shall be respectively entitled to a dividend or dividends; PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by the said parties hereto, that no person shall be admitted a creditor after a final dividend shall have been declared of the fund from which such creditor would have been entitled to a dividend in case he had executed these presents, or signified his assent thereto, before the declaring of such dividend; AND IT IS HEREBY AGREED AND DECLARED, that all debts owing by the said

Provision that creditors may come in after a dividend has been declared, and receive a like dividend, before any future dividend is paid to the other creditors;

but not so as to disturb former dividends.

Proviso that no proof shall be admitted after a final dividend.

Agreement that all debts shall be verified on

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

[*bankers*], as well on their partnership as on their private or separate account, shall (if the inspectors for the time being shall so require) be verified and proved by the affidavits, or, if quakers, the affirmation, of the said several creditors, stating the amount and consideration of the same, to be sworn and made before a master or master extraordinary in chancery, or a magistrate of the county or district in which the party shall reside; *And* that it shall be lawful for the said [*bankers*], with the approbation of the inspectors, to admit any person or persons a creditor or creditors, under or by virtue of these presents, for any debt or debts claimed by him, her, or them from the said [*bankers*], or any or either of them, on such evidence as the same inspectors shall think reasonable; *And* also to adjust, settle, compromise, and ascertain the amount of the debt or debts claimed by the said creditor or creditors, and also the fund on which the party or parties is or ought to be deemed a creditor or creditors; *And* also to separate, distinguish, and allot the separate property from the partnership property, according to the best of their or his judgment and discretion, and to settle, ascertain, and adjust the state of the accounts as between the partners, for the purpose of dividing the final residue of the surplus between them and their respective representatives; *And* that it shall be lawful for the said [*bankers*] respectively, with the approbation of the inspectors for the time being, to compound any debts owing, or which shall become owing to them the said [*bankers*], or any one or more of them, and to accept part thereof as security for the same in full thereof, or to give further time for the payment of the same debt or debts which shall be deemed bad or desperate; *And*, with the like approbation, to sign a certificate of any person or persons indebted or to become indebted to the said [*bankers*], or any or either of them, or who is or are, or shall or may become bankrupt; *And* to make any arrangements the inspectors for the time being shall deem reasonable, with any person or persons who does or do, or shall or may hold any security or securities given by the said [*bankers*] jointly, or any or either of them separately, out of or upon any lands or other property holden by them the said [*bankers*], or any

oath, if the inspectors require it;

that the bankers, with the approbation of the inspectors, may admit debts on any evidence the inspectors think fit;

and adjust and settle accounts, &c.;

and separate partnership debts from private debts;

and settle accounts between the partners prior to a final division;

that it shall be lawful for the bankers, with the approbation of the inspectors, to compound any debts owing *to* them, and accept security, and allow time for payment of them;

and to sign certificates of bankrupt debtors;

and make arrangements as to property in mortgage or pledge;

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

or either of them, by way of mortgage, or as a pledge for money, with the view or for the purpose of procuring part of the lands or property comprised in any such mortgage or security to be exonerated or released of and from the security made or given thereon, so as that any consideration or price shall not be paid or given for or upon any such arrangements, beyond the amount or value of the principal money and interest then due to the person or persons entitled to such securities respectively, and the incidental expenses attending such arrangements and release; *And* with and under such approbation as aforesaid, to sell and deliver all or any part of their property or effects respectively, for money to be paid on a future day, or on credit, or for securities or security by way of bills of exchange, as the inspectors for the time being shall think advantageous; *And also* to sell and convert into money all contingent interests and securities which cannot be enforced with a prospect of advantage, and all debts which shall be deemed bad or doubtful, or which cannot be collected within a reasonable time; *And also* to adjust and settle with creditors to have bank annuities or other funded property, or bank stock or India stock replaced, or creditors by way of annuity, which to the inspectors for the time being shall appear most proper for bringing their debts to a fixed balance in money, and to carry such terms and arrangements into effect by performing the same; *And also* generally, with such approbation as aforesaid, to make all such payments and allowances, and do and execute all such acts, deeds, matters, and things touching or concerning the affairs or business of the said partnership, and the partnership property, and the separate property of each partner, for facilitating the payment of the debts of the creditors, and to do any act whatsoever the inspectors for the time being, or any three of them, shall think expedient or deem advisable for the benefit of the creditors, parties to or assenting to these presents, as the said partners, or any of them, could or might have done if these presents had not been made and executed, and they had respectively continued in the sole management and disposition of their affairs, estates, and effects respectively; AND IT IS HEREBY AGREED AND

and to sell property on credit;

and to sell contingent interests and doubtful debts;

and to settle with annuity creditors;

and generally to make any other necessary arrangements for settling their affairs.

Agreement that in case of dis-

DECLARED between and by the said parties hereto, that in case any doubts, difficulties, or disputes shall arise in ascertaining the amount of any sum or sums of money due, owing, or payable to, or to become due, owing, or payable to any creditor or creditors of the said [*bankers*], either on their partnership or separate account, or upon the construction of any clause, matter, or thing contained in this present indenture, or otherwise in reference to the same, *Then* and in that case, the full and exclusive power of ascertaining the amount of the same debt or debts respectively, or of determining such doubts, difficulties, or disputes, shall be referred to the determination of the inspectors for the time being, or at their discretion, to the determination of three indifferent persons, one to be chosen by the said inspectors, another by the party taking the other side of the matter in doubt or dispute, and the third by the two who shall be so first chosen; *And* that the award and determination of the inspectors, or of any two of such referees respectively, as the case may require, shall be final and conclusive on all parties entitled to any interest or benefit under these presents; *And* that all differences which shall arise respecting the amount owing or to become owing to the said [*bankers*], or any one or more of them jointly or separately, or touching or concerning any property, right, or interest, claimed on their or any of their effects, or belonging specially to any of their creditors, shall be settled in the same or the like manner; AND every of them the said [*bankers*], so far as regards the acts and deeds to be done and executed, or refrained from, by himself, his heirs, executors, administrators, and assigns, but not further or otherwise, *Doth*, for himself, his heirs, executors, and administrators, hereby further COVENANT, promise, and agree with and to the said [*inspectors*], their executors and administrators, that they the said [*bankers*] shall not, at any time or times hereafter during the said term of two years, or such extended term or terms as aforesaid, (if any such shall be agreed on,) or until the said creditors shall be paid their full debts in manner aforesaid, enter into and undertake, or become engaged or concerned in any new adventure, banking or commercial transaction, or any other trade or

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

putes, the same shall be settled by arbitration.

Covenant from the bankers, that until their affairs are settled, they will not engage in any trade or business;

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

business whatsoever, except such as shall be essential for getting in and disposing of their estates and effects, under the direction of the inspectors for the time being, and in their judgment for the benefit of the said creditors;

or give preference to any of their creditors;

Or convey away, alienate, or dispose of any of their partnership real estate or personal effects, or do or suffer to be done any act, deed, matter, or thing whatsoever, whereby any of the creditors of the said [*bankers*] jointly, or any of them separately, shall or may obtain any security or securities for his, her, or their debts or debt, or payment thereof, or of any part thereof before another of them, contrary to the true intent and meaning of these presents;

or release debts, or bring actions for debts, without consent of inspectors;

Or release any debt or debts, or bring any actions or suits for recovering any such debt or debts, without the license or consent of the said inspectors for the time being, or some three of them;

that they will keep books and faithful accounts;

And that they the said [*bankers*] shall and will, from time to time, keep proper books of account relating to their said joint and separate estates and effects respectively, and the management and disposal thereof, and therein make, or cause to be made, true and proper entries of all receipts, payments, and disbursements, and of all such other transactions, matters, and things, as shall be requisite and agreeable to the custom of bankers, in order to shew the true state and condition of their estate and effects respectively;

preserve letters;

And preserve all letters received from, and make and keep copies of all letters written or sent by them to, all and every their correspondents, or other person or persons whomsoever, respecting their affairs or their conduct therein;

and permit the inspectors to examine the books, &c.;

And permit the inspectors for the time being, or any of them, from time to time, and at all times, to examine and inspect the said books, accounts, papers, letters, and writings, relating to their estate and effects, and the management thereof;

And from time to time, when and so often as they shall be thereunto required by the inspectors for the time being, shew and report to them the state and condition thereof, and of all their proceedings therein, and if required, verify the truth of such accounts upon oath, before one of the masters of the High Court of Chancery;

and will not compound debts, sign certificates, &c.

And that they the said [*bankers*] shall not at any time or times hereafter during the said term of two years, or such further

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

term or terms as aforesaid, (if any such shall be agreed on,) or until the said creditors shall be paid their full debts, compound with any person or persons whomsoever for any debt or debts now or hereafter to become due to the said [*bankers*], or to their partnership estate, or to any of them, or his separate account, for any less sum or sums of money than the whole of such debt or debts, or sign any bankrupt's certificate, or any letter of license, release, or deed of composition, or any other instrument in writing whereby any sum or sums of money due or to grow due to the said [*bankers*], or their partnership estate, or to any of them, or his separate estate, may be assigned, lessened, delayed in payment, released, or discharged, without the consent of the inspectors for the time being in writing for that purpose first had and obtained; AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by all the parties to these presents, that it shall and may be lawful for the inspectors for the time being, or any three of them, (if they shall consider it for the advantage of the creditors,) to continue on foot any policy or policies of insurance made by the said [*bankers*], on any or either of them, on their or any or either of their lives or life, for securing any sum or sums of money, or to renew the same, or to effect or take out any new or other policy or policies for the like purpose on the lives or life of the said [*bankers*], or any one or more of them, or of any other person or persons (*b*), and to apply any part of the trust monies for the purposes lastly hereinbefore mentioned, or any of them; AND every of them the said [*bankers*], so far as regards the acts and deeds to be done and executed, or refrained from, by himself, his heirs, executors, and administrators only, but not further or otherwise, *Doth* hereby for himself, his heirs, executors, and administrators, further COVENANT, promise, and agree to and with the said [*inspectors*], their executors and administrators, that they the said [*bankers*], and their respective heirs, executors, administrators, or assigns, shall and will,

without the consent of inspectors.

Agreement that inspectors may keep on foot an insurance on the lives or life of the bankers, or any of them.

Covenant from the bankers that they will, at the request of the inspectors, sell and convey their estates to any persons who shall be willing to purchase them;

(*b*) This should be qualified, and confined to any debtor of the bankers, or to any person in whose life the bankers may be interested.

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

at any time or times hereafter during the continuance of this inspectorship, at the request of the inspectors for the time being, sell and dispose of, and absolutely convey, surrender, and assign or assure all the partnership real estates and leasehold tenements whereof or whereunto the said [*bankers*], or any of them, or any person or persons in trust for them, or any of them, now are or is, or shall be seised or entitled for any estate or interest whatsoever, in England or Wales, or elsewhere, either in possession, remainder, reversion, expectancy, or otherwise howsoever, or any part or parcel thereof, (subject to the incumbrances, if any, then charged upon or affecting the same,) unto any person or persons who shall be willing to become the purchaser or purchasers thereof, for the most money or best price or prices that can or may at the time or times of such sale or sales be reasonably had or gotten for the same; or otherwise, at the discretion of the inspectors for the time being, shall and will well and sufficiently, and in due form of law, convey, surrender, assign, and assure the same real estate and leasehold tenements respectively, or any part thereof (subject as aforesaid) unto the inspectors for the time being, their heirs, executors, administrators, and assigns, according to the nature and quality of the same, with the appurtenances, and all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, at law or in equity, and in possession, remainder, reversion, or expectancy, of them the said [*bankers*] respectively, of, in, and to the same; *Upon trust* to sell and dispose of the same, and every part thereof, in such manner as the inspectors for the time being shall think fit, and to receive and give good discharges for the purchase money or purchase monies for which the same shall be sold; *And* after deducting out of the monies to arise and be produced from such sale or sales, all their costs and expenses in and about the same, *Upon trust*, so far as circumstances will then permit, to pay, apply, and dispose of the said money, for the purposes and in the manner hereinbefore expressed and contained, of or concerning the clear residue of the produce of the partnership effects of the said [*bankers*]; AND IT IS HEREBY AGREED AND DECLARED between and by all the parties to these

or, at the like request, convey the same to the inspectors, in trust to sell,

and pay the monies to the creditors as before mentioned.

Agreement that if the bankers sell the estates,

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

presents, *And* every of them the said [*bankers*], (so restricted as aforesaid,) *Doth* hereby for himself, his heirs, executors, and administrators, further COVENANT, promise, and agree, with and to the said [*inspectors*], their executors and administrators, that in case any such sale or sales shall be made of all or any part of their partnership real estates and leasehold tenements respectively, by the direction of the inspectors for the time being, they the said [*bankers*], their executors or administrators, shall and will immediately after such sale or sales shall be completed, and they or any of them shall have received the purchase money for the the same, pay over the same to the inspectors for the time being, to be by them paid and applied in the manner hereinbefore directed concerning the monies to arise by sale of the same premises in case the same should be sold by the inspectors for the time being; PROVIDED ALWAYS, and it is hereby further declared and agreed by and between all and every the parties to these presents, that it shall be lawful for the inspectors for the time being, and they are hereby authorised and empowered, by and out of the trust money and effects which shall come to their hands by virtue of these presents, to make and pay to the said [*bankers*] respectively, such yearly and other allowances for the support of themselves respectively, and their respective families, as the said inspectors shall in their discretion think reasonable and proper; PROVIDED ALWAYS, and it is hereby also agreed and declared, &c. that it shall be lawful for the inspectors for the time being, at any time before the expiration of the said term of two years, by any memorandum indorsed on these presents, or a duplicate thereof, and signed by them, to extend the term of the said inspectorship for such further period as the same inspectors shall think proper, and so on from time to time, when and so often as the inspectors for the time being shall think it advisable to prolong any such extended term; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties to these presents, *And* every of them the said [*bankers*], (so restricted as aforesaid,) *Doth* hereby for himself, his heirs, executors, and administrators, further COVENANT, promise, and agree with and to the said [*inspectors*], their executors and administrators, that in case the said creditors,

they will immediately thereafter pay the purchase monies to the inspectors, to be applied as above.

Power to the inspectors to make proper allowances to the bankers for the support of their families.

Power to the inspectors to extend the term of the inspectorship as they find necessary.

Covenant from the bankers, that if the creditors shall not be fully paid before the end of the term of the inspectorship, they, the bankers, will convey all their

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

estates to such persons as the majority of the creditors at a meeting shall appoint.

parties hereto, shall not be paid the whole of their respective debts as aforesaid, at or before the expiration of the said term of two years, or such further term or terms as may be appointed under the power hereinbefore for that purpose contained, the said [*bankers*], at the request of the said [*inspectors*] for the time being; *And also* the said inspectors (if the same shall have been previously conveyed and assured to them under the covenant or proviso for that purpose hereinbefore contained) shall and will at any time or times after the expiration of the said term of two years, or such further term or terms as aforesaid, well and sufficiently, and in due form of law, grant, release, convey, assign, and assure unto and to the use of such person or persons as shall be named for that purpose, by a majority in value of the joint creditors present, personally or by agents, at any meeting to be convened in aforesaid, by or on the part of the said inspectors, and of which fourteen days notice, stating the object and the time and place of meeting, shall be inserted in the London Gazette, and in one morning and one evening daily newspaper, &c. (*as ante*, p. 517), and to the heirs, executors, administrators, and assigns of such person or persons respectively, ALL and singular the partnership freehold and leasehold estate and estates, monies, goods, chattels, and effects whatsoever and wheresoever, and of what nature, kind, or quality soever, of or to which they the said [*bankers*], or any of them, or the said [*inspectors*], or any other person or persons whomsoever in trust for them, or any of them, now are or is, or at any time or times previous thereto, shall or may be anywise seised, possessed, or entitled in possession, reversion, remainder, expectancy, or otherwise howsoever, or so much and such part of the same respectively as shall or may not have been by them the said [*bankers*] respectively before sold or disposed of, released, and assured to purchasers, as hereinbefore mentioned and agreed to be by them done and performed as aforesaid, in such sort, state, and condition, as the same estate and premises may then happen to be, together with their appurtenances, *And* all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever of them the said [*bankers*] respectively; *And also* (if such previous conveyance and assur-

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

ance shall have been made to them as aforesaid,) of each inspector respectively of, in, and to the same, and every part thereof, (subject only to such incumbrances, charges, and other outgoings, if any, as may affect the same estates, or any of them respectively,) *Upon trust* to sell and dispose of or convert into money the same, and every part thereof, in such manner as the trustees or trustee for the time being of the same shall think fit; *And* thereupon the said inspectors for the time being shall pay or deliver over to the same trustees or trustee, all partnership monies and effects then remaining in their hands or under their control, after first deducting therefrom all expenses attending the execution of the trusts and purposes of these presents; *And* the clear residue of the monies to be received by such trustee or trustees from the partnership freehold and leasehold estates, goods, chattels, and effects respectively, shall by the same trustee or trustees, after deducting all their costs and expenses in and about the execution of those trusts, so far as circumstances will permit, be paid, applied, and disposed of in the manner hereinbefore expressed and contained of and concerning the clear residue of the produce of the partnership estate and effects of them the said [*bankers*]; *And* that the said inspectors shall also convey and assure unto the same trustees all the separate estate and effects of each partner then remaining vested in such inspectors, and pay and deliver over all the monies and effects then in their hands on the separate account of each partner unto the trustees so to be named as aforesaid, upon the trusts which shall be then subsisting or capable of taking effect of and in the same respectively, under or by virtue of the severally hereinbefore mentioned indentures of equal date herewith and these presents respectively, so that the clear residue of the money to be produced from each partner's separate estate and effects, shall and may be, so far as circumstances will then permit, be paid, applied, and disposed of in the manner hereinbefore expressed and contained of or concerning such clear residue: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if at any time previously to the expiration of the said term of two years, or such further term or terms

In trust to sell the same,

that the inspectors shall pay all the monies in their hands to the trustees;

that the surplus of the monies so received by the trustees, after payment of expenses, shall be applied as hereinbefore mentioned in regard thereto;

that the inspectors will convey the separate estates to the same trustees, upon the trusts hereinbefore declared thereof.

Proviso that if the inspectors think it best to sell the concern before the end of the two

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

as hereinbefore in that behalf mentioned, the inspectors for the time being, or any three of them, shall consider it for the advantage of the creditors that the whole of the said partnership concern shall at once be disposed of, and a majority in value of joint creditors present, personally or by agent, at any meeting to be holden in aforesaid, pursuant to such notice as hereinbefore is mentioned, shall assent thereto, *Then* and in such case, the said [*bankers*] shall and will, at any time or times thereafter, at the request and with the approbation of the inspectors for the time being, sell and dispose of, and assure the whole of their said partnership concern, and the estates, credits, and effects of or belonging to the same, then remaining undisposed of, to such person or persons, upon such terms, and in such manner, as the inspectors for the time being, or any three of them, shall approve of and direct; *And* all monies to be produced therefrom shall forthwith be paid to the inspectors for the time being, to be by them applied and disposed of, so far as circumstances will then permit, in the manner hereinbefore declared or directed concerning the money to be produced from the said partnership estate and effects: PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by all the parties hereto, that the resolutions signed by the chairman presiding at any such meeting of creditors so convened as aforesaid, shall be a sufficient warrant or authority for the partners and the inspectors respectively, to make and execute such conveyances, assignments, surrenders, and other assurances as are hereinbefore directed to be respectively made and executed, either after the expiration of the said term of two years, or such extended term or terms as aforesaid, or previously thereto, as the case may require: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the releases, conveyances, and assignments hereinbefore covenanted and agreed on the part and behalf of the said [*bankers*] to be made and executed as aforesaid, EVERY of them the said creditors of the said [*bankers*] jointly, or of any of them separately, who shall execute or assent to these presents, for himself and herself separately, and for his or her heirs, executors,

years, they may do so, with the previous consent of the majority of the creditors, at a meeting called for that purpose;

and the monies arising thereby shall be paid to the inspectors.

Agreement that the resolutions of a meeting, signed by the chairman, shall be sufficient for the bankers and inspectors to act upon.

Third witnessing part. Each of the parties executing these presents, agrees to accept the provision hereby made for them in full discharge of their respective debts.

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

administrators, partners, and assigns, according to his, her, and their respective rights and interests therein, but not further or otherwise, doth hereby COVENANT, promise, and agree, with and to the said [*bankers*], and every of them, and their and every of their executors and administrators, that they the said creditors, and each and every of them, shall and will accept and take the said releases, conveyances, assignments, or other assurances, in full satisfaction and discharge of and for all and every the debts and debt, and sums and sum of money, claims, and demands whatsoever, due and owing to them respectively, or hereafter to become due and payable to them respectively, by and from the said [*bankers*], or any of them, on account of any of their dealings, antecedent to the date hereof; *And* that they the said creditors, their respective executors and administrators, shall and will, upon the said [*bankers*] making and executing such releases, conveyances, assignments, or other assurances as last aforesaid, severally and respectively acquit, release, and discharge them the said [*bankers*] respectively, and their respective heirs, executors, and administrators, of and from all and every debt and debts, sum and sums of money, claims, and demands whatsoever, and of what nature or kind soever, now due, or which may hereafter become due, upon or by reason of any contract or engagement, matter, or thing whatsoever, entered into or made by the said [*bankers*], or any of them, before the date of these presents, or during the continuance of the inspectorship hereby established, but not so as to discharge, vitiate, and make void, any debt or demand which the said creditors respectively shall or may have on any other person or persons, who shall or may be indebted to them respectively; *And* that after the execution of such conveyances and assurances as last aforesaid, and in the mean time, until such acquittances, releases, and discharges, shall be executed by the said creditors respectively, these presents shall be and operate as a full and complete acquittance, release, and discharge, of and from their respective debts, claims, and demands, *And*, if necessary, may be pleaded in bar thereto, or given in evidence as a discharge for the same; PROVIDED ALWAYS, and it is hereby declared and agreed between

and will execute proper releases;

but not so as to release other persons, liable for the same debts;

and that till such releases shall be executed, these presents may be pleaded as a release.

Proviso that nothing herein contained shall

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

and by the said parties hereto, that nothing herein contained shall in anywise subject or make liable any part of the real or personal estate of the said [*bankers*], or any of them, to any of the charges or incumbrances on any other part of the same real or personal estates respectively, at the time of the execution of these presents, or to make the money arising from the sale of any part of the said estates respectively, applicable to the discharge of the incumbrances affecting any other part of the said estates respectively, unless the inspectors for the time being shall in their discretion think fit to apply the same in discharge thereof, which they are hereby authorised and empowered to do, if they shall think it will be for the general benefit of the trust fund; PROVIDED ALWAYS, and it is hereby expressly agreed and declared, &c. that if at any time previous to a dividend being made as aforesaid, the said [*bankers*] shall be duly found and declared bankrupts, under a joint commission of bankruptcy issued against them, *Then*, and in that case, and immediately thereupon, these presents, and every clause, matter, or thing herein contained, shall cease and be void; *And* that if at any time previous to a dividend being so made as aforesaid, any one or more of them the said [*bankers*] shall be found and declared a bankrupt or bankrupts, under any commission or commissions issued against him or them separately, or jointly with any person or persons other than his or their co-partners in the said firm of , and it shall be considered necessary or expedient, by the inspectors for the time being, or any three of them, to put an end to the proceedings under these presents, and to the provisions herein contained, *Or*, if for any other cause whatsoever it shall, before a dividend shall have been so made, be considered necessary or expedient by the said inspectors, or any three of them, to put an end to the proceedings under these presents, and to the provisions herein contained, *Then*, and in either or any of the said cases, it shall be lawful for the said inspectors for the time being, or any three of them, by a declaration in writing under their hands to that effect to be endorsed on these presents, or a duplicate thereof, to declare these presents, and the trusts and powers herein contained, and also the aforesaid letter

subject one estate with the charges affecting another estate.

Proviso that if the bankers are declared bankrupts before a dividend is declared, this deed shall be void;

and that if any one or more of the bankers become bankrupt, or the inspectors think it expedient to determine this deed, the inspectors may declare it at an end;

of license, to cease, determine, and be at an end; *But* the inspectors for the time being shall cause a notice of any such determination to be inserted in the London Gazette, and one morning and one evening daily paper, and in the [*local papers*]; *And* shall, in case of the determination of these presents in any manner whatsoever, be entitled to retain out of, or to resort to the said joint and separate estates and effects respectively, for all their respective expenses incurred, or for which they shall have become liable in or about the execution of the powers and trusts of this present indenture, or any of them; *And* that upon the determination of these presents, either in consequence of all of them the said [*bankers*], being found and declared bankrupts under any joint commission of bankruptcy against them, or in consequence of any declaration to be indorsed on these presents, as lastly aforesaid, the several creditors, parties to or acceding to these presents, shall, as to so much of their respective debts as shall then remain unsatisfied, so far as circumstances will permit, be in the same situation in all respects, as they would have been if they had not executed or assented to these presents; PROVIDED ALWAYS, and it is hereby further declared and agreed, &c. that in the event of any of the said partners being found or declared a bankrupt under any such separate commission or commissions of bankruptcy issued against any or either of them before a dividend shall be made, and the trusts and provisions of this deed shall not be determined under the proviso hereinbefore for that purpose contained, nothing herein contained shall prevent the said creditors, parties or acceding to these presents, from proving their debts respectively, under such separate commission or commissions of bankrupt, and taking a dividend under the same; *But* the creditor or creditors so proving or receiving a dividend or dividends, shall from time to time deduct the amount received from his, her, or their debt or debts respectively, and such reduced amount only shall be considered as the debt or debts in respect of which dividends shall from time to time thereafter be calculated and paid, under the trusts of these presents; PROVIDED ALSO, and it is hereby further declared and agreed, &c. that in the mean time, and until the determi-

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

and that if this deed becomes void, the trustees may retain their expenses out of the trust monies;

and the creditors shall, so far as their debts remain unsatisfied, be in the same situation as if this deed had not been executed.

Proviso that if any of the bankers are declared bankrupt, under a separate commission, and this deed is not thereupon avoided, the creditors may prove their debts under such commission, and take a dividend on them;

but the dividend so received shall be allowed for on making future dividends under this deed.

Proviso that until the deed is avoided, the

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

nation of these presents by any of the means lastly hereinbefore mentioned, it shall be lawful for the inspectors for the time being to proceed and act in the execution of these presents, in every respect, as they shall think proper, and judge to be most for the benefit of the said creditors; PROVIDED ALWAYS, and it is hereby agreed and declared, &c. that in case any creditor or creditors of the said [*bankers*], or any of them, whose debt or debts shall remain unsatisfied, or the executors or administrators of the same creditor or creditors, shall for the space of three calendar months after notice for that purpose, to be given to the same creditor or creditors, his or their executors, administrators, or assigns, by the inspectors for the time being, or any three of them, refuse or neglect to execute these presents, or accede to the same, *Then*, and in that case, the creditor or creditors so refusing, his, her, or their executors or administrators, shall be excluded from any benefit of or under any of the powers or trusts hereinbefore contained; *And* all such and so many of them the said [*bankers*], as shall be the debtor or debtors of the same creditor or creditors, his or their executors, administrators, or assigns, shall be permitted to stand in the place of the same creditor or creditors respectively, his, her, or their executors or administrators, and to have the same or the like benefit under the trusts hereinbefore declared, as the same creditor or creditors respectively, his, her, or their executors or administrators, would have been entitled to have, in case the same creditor or creditors, his, her, or their executors or administrators, had executed these presents, or assented thereto; PROVIDED ALWAYS, and it is hereby also agreed and declared, &c. that if at any time after the expiration of one year from the date hereof, and before the said partnership debts shall be paid in full, any of them the said [*all the bankers except the first*], shall be desirous of conveying, assigning, or otherwise effectually assuring all his share or interest of or in the said partnership estate and effects, then remaining undisposed of, unto and to the use of the said inspectors for the time being, or unto such person or persons as they shall direct, and their heirs, executors, administrators, and assigns, according to the nature and quality of the same, *Upon trust* to sell and

inspectors may act as they judge best.

Proviso that creditors who will not come into the arrangement hereby made for three months after notice, shall be excluded the benefit of the arrangement,

and that the bankers shall stand in the place of such creditors in respect to such benefit.

Proviso that if at any time after the first year, any of the bankers, except [ ], shall be desirous of giving up all his or their property for the benefit of the creditors, and of being at once released from all further claims, &c. it shall be lawful for him or them so to do.

convert into money, and receive the same, and to apply the money to be produced or received therefrom, so far as circumstances will then permit, in the manner and for the purpose hereinbefore directed, concerning the money to be produced from the said partnership estate and effects, *Then*, and in every such case, such conveyances, assignments, or other effectual assurances, as last aforesaid, together with the conveyance and assignment bearing equal date with these presents, executed by such one or more of them the said [*part of the bankers*], who shall execute such conveyance, assignment, or other effectual assurance of his or their share or shares of the said partnership estates and effects, shall be taken and received by his, her, or their joint and separate creditors, parties to these presents, or assenting to the same, in full satisfaction of the share or shares due from him or them respectively, of and in the said partnership debts, and of the whole of his, her, or their respective separate debts; *And* thereupon such creditors shall respectively release him or them from the same respectively, and in the mean time, and until such release shall be made, these presents shall be an effectual discharge of the said debts, and may if necessary be pleaded in bar to, or given in evidence, as a satisfaction or release of any action or suit for the same respectively; *Nevertheless* it is hereby expressly agreed and declared, that notwithstanding the execution of such conveyance, assignment, or other effectual assurance, by any one or more of them the said [*part of the bankers*], the other or others of them, shall not before he or they shall, in respect of his or their share or respective shares of the said partnership estates and effects respectively, have executed such conveyance, assignment, or other assurance, be released, exonerated, or in anywise discharged from the payment of the said partnership debts, or his or their respective several debts then remaining due and owing, or from any liability or obligation on account of the same respectively; nor shall the execution of such conveyances, assignments, or other assurances, or any of them, in any respect release or otherwise discharge the said [*other banker*], from his obligation or liability to the payment of the said partnership debts, or his separate debts, or any of them respectively, or from

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

and the creditors shall thereupon execute a release;

but no conveyance, &c. made under the above provision, shall release [ ];

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

his obligations or liabilities under this present indenture, so far as the same shall or can be applicable to the then state or circumstances of the affairs and property hereinbefore mentioned; *And* the said co-partnership affairs shall, notwithstanding any such conveyances, assignments, or other assurances lastly hereinbefore mentioned, be from time to time continued and carried on, under the provisions and terms of these presents, so far as the same shall be practicable; AND the said [*inspectors*], for themselves respectively, (for their own respective acts and deeds only, and not further or otherwise,) do hereby COVENANT, promise, and agree, with and to the said [*two of the creditors, parties to these presents*], their executors and administrators, *In trust* for themselves, and other the creditors, parties to or acceding to these presents, that the said [*inspectors*] shall and will from time to time take and keep, or cause to be taken and kept, distinct minutes of all the orders, resolutions, proceedings, and transactions, in and about the partnership and separate affairs of the said [*bankers*] respectively, at any meeting or meetings of the inspectors for the time being, or of any three of them; *And* that such minutes shall, at all reasonable times, be open to the inspection and examination of the creditors parties to these presents, or any of them; PROVIDED ALWAYS, and it is hereby declared and agreed between, &c. that the covenant lastly hereinbefore contained, shall extend only to such of the said inspectors for the time being, as shall be present at the meeting or meetings therein referred to; nor shall any one or more of such inspectors be answerable for any order, resolution, proceeding, or transaction, made, done, or entered into, at any meeting or meetings at which he or they shall not have been present; AND IT IS HEREBY AGREED AND DECLARED, &c. that all rules, orders, resolutions, directions, agreements, consents, and other acts, matters, and things, touching or concerning the said partnership affairs and business, or the said partnership estate and effects, or each partner's separate affairs, estate, and effects, which shall be made or entered into by the inspectors for the time being, or any three of them, shall be binding and conclusive on all the creditors, parties hereto, or accepting the benefit hereof; AND IT IS HEREBY FUR-

and the copartnership affairs shall be wound up under these presents, as if no such conveyance had been made.

The inspectors covenant with two of the creditors, on behalf of all of them, to keep account of the proceedings, and allow the creditors to see them.

Proviso that the inspectors shall not be answerable for resolutions passed at meetings at which they are not present.

Agreement that resolutions and other acts of inspectors shall be binding on the creditors.

Provision for the appoint-

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

THER AGREED AND DECLARED, between and by all the parties to these presents, that in case any two or more of them the said [*inspectors*], shall happen to die, or decline to act in the execution of these presents, it shall be lawful for the survivors or survivor, or others or other of them the said [*inspectors*], to nominate and appoint any one or more fit and proper person or persons to be joined with the surviving or continuing inspectors or inspector, in the room of such of them as shall die or decline to act as aforesaid, so as to preserve and keep up the same number of inspectors hereby appointed; and such persons so to be hereafter appointed, shall from thenceforth act in the management of the said estates, and in the execution of the trusts and powers declared and contained in these presents, as fully and effectually to all intents and purposes, as if he or they had been originally appointed an inspector or inspectors in and by these presents; AND IT IS HEREBY DECLARED AND AGREED by and between all the said parties hereto, that the said several inspectors hereby appointed, and each and every of them, and the heirs, executors, administrators, and assigns of them, and each and every of them, and the inspector and inspectors to be hereafter appointed by virtue of these presents, and his and their respective heirs, executors, administrators, and assigns, shall be charged and chargeable respectively, for such monies only as they or any or either of them shall actually receive by virtue of these presents, notwithstanding their or any or either of their giving or signing, or joining in giving or signing, any receipt or receipts for the sake of conformity; *And* that any one or more of them shall not be answerable or accountable for the other or others of them, or for the acts, deeds, receipts, neglects, or defaults of the others or other of them, but every of them for his own acts, deeds, receipts, neglects, or defaults only; *And* that they or any of them shall not be answerable or accountable for any banker, broker, or other person or persons, with whom or in whose hands, any part of the said monies, goods, or effects, shall or may be deposited or lodged for safe custody or sale, or otherwise, in the execution of any of the powers or authorities herein or hereby created; *And* that they or any of them shall not be at any time answerable or accountable

ment of new inspectors in case of death.

Provision for the indemnity of the inspectors.

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

for the conduct of any agent to be appointed by them, or for the insufficiency or deficiency of any security or securities, stocks, or funds, in or upon which the said monies, or any part thereof, shall be placed out or invested, nor for any other misfortune, loss, or damage, which may happen in the execution of the powers and authorities hereby created, or in relation thereto, except the same shall happen by or through their wilful default respectively; *And* also that it shall be lawful for the said [*inspectors*], or the survivors or survivor of them, or other the inspectors or inspector for the time being, their and every of their executors, administrators, and assigns, by and out of the monies which shall come to their hands respectively by virtue of these presents, to retain to and reimburse himself and themselves respectively, and also to allow to his and their co-inspectors and co-inspector, all costs, charges, damages, and expenses, which they or any of them shall or may sustain, expend, disburse, or be at, be put unto, or be liable to pay, bear, or sustain, in or about the execution of any of the aforesaid powers or authorities, or otherwise in relation thereunto; AND for more effectually indemnifying the inspectors or inspector for the time being against loss, EACH and every of the creditors, parties hereto of the third part, severally, separate and apart of the other and others of them, doth hereby for himself and herself respectively, his and her respective heirs, executors, and administrators, and as to and concerning only the acts, deeds, and defaults of himself and herself respectively, and his and her respective heirs, executors, administrators, and partners, COVENANT, promise, and agree with and to the said [*inspectors*], their executors and administrators, that in case any one or more of the inspectors for the time being, his or their executors or administrators, shall sustain or incur any loss, damages, or expenses, by reason or on account of the acceptance or execution of the trusts hereinbefore contained, or the trusts of the said respective indentures of equal date with these presents, or any act relating to the same respectively, *Then* and in that case, each of the said creditors, parties hereto of the third part, his or her heirs, executors, administrators, or partners, when thereunto requested by the inspector or inspectors who shall for the

Covenant from the creditors with the inspectors, to bear a fair proportion of any loss the inspectors may sustain in regard to these presents, &c.

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

time being sustain such loss, damages, or expenses, his or their executors or administrators, shall and will pay to him or them such sum or sums of money as shall be the proportion of each of the same creditors respectively, of the same loss, costs, charges, damages, and expenses; *And* that such proportion shall be estimated by the full amount of all the debts due to the creditors respectively, who are, or shall become parties to these presents by executing or acceding to these presents, so that each creditor so executing or acceding to these presents, his or her executors or administrators, shall contribute in proportion to the debts due to him or her respectively, when compared to the full amount of the debts of all the creditors who shall execute or accede to these presents: PROVIDED ALWAYS, and it is hereby agreed and declared between, &c. that nothing herein contained shall extend, or be deemed or construed to extend, to prevent the said creditors, parties hereto, or any of them, or their partners or partner, or any of their respective heirs, executors, administrators, or assigns, from suing or prosecuting any other person or persons other than the said [*bankers*], who is, or are, or shall or may be liable to pay or make good to any of the creditors, all or any part of their respective debts, either as drawers, indorsers, or acceptors of any bill or bills of exchange or promissory note or notes, or as being jointly or severally bound in any bond or bonds, or other covenants or instruments, or as being liable to pay any such debt without having put their names to any bill or note, or other instrument whatsoever, or otherwise howsoever, as if these presents had never been made; *And* that any of the said creditors may execute these presents without prejudice to any lien or other security which they or either of them hath or may have for his, her, or their debt or debts, or any part thereof, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding: PROVIDED ALWAYS, and it is hereby agreed and declared, that if in respect to the said separate, real, and personal estate of any of them the said [*bankers*], or any part of the same, it shall not be necessary for answering the trusts and purposes expressed in the assurance of equal date with these presents, by which the same have been so assured unto and

Proviso that creditors, by joining in this deed, shall not be prevented from suing other persons liable to pay their debts, or lose the benefit of any security they may possess.

Provision for enabling the inspectors to proceed to a sale of the real and personal estates assured to them as aforesaid, if they should think it expe-

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

to the use of the said [*inspectors*], their heirs, executors, administrators, and assigns, as hereinbefore is mentioned, to proceed to the sale or mortgage, still if the inspectors for the time being, acting in the execution of the trusts and powers of these presents, shall consider it necessary or expedient for answering the said trusts and purposes, or any of them, that any sale or mortgage thereof should be effected, it shall be lawful for the said [*inspectors*], and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor, or other the trustees or trustee for the time being of the said real and personal estate respectively, and they and he are and is hereby required to sell or mortgage the same respectively, or any part thereof, and that as fully and effectually to all intents and purposes whatsoever as they or he could or might have done for answering any of the trusts or purposes expressed or contained in the assurance of equal date with these presents, and by which the same have been so respectively assured unto and to the use of the said [*inspectors*], their heirs, executors, administrators, and assigns as aforesaid; *Yet* nevertheless it shall on no account be obligatory on them, or any of them, to proceed to a sale or mortgage of all or any part of the separate real or personal estate of any of them the said [*bankers*], except at such time and in such manner as the inspectors for the time being shall think proper, it being the true intent and meaning of these presents, that they alone shall be sole judges of the form and manner, or expediency, of selling or mortgaging the same, or any part thereof, without any control or interference by or on the behalf or on the account of any other of the parties to these presents: PROVIDED ALWAYS, that notwithstanding all or any of the provisions hereinbefore contained, the said [*bankers*] shall, as amongst themselves respectively, or their respective heirs, executors, and administrators, in respect to the balance of the accounts subsisting or to arise between them as partners, or on account of their partnership, either by any payments made or to be hereafter made by any or either of the said partners, or out of his or their estate and effects respectively beyond his or their proportional part or parts, be in the same condition and situation in all respects,

dient so to do, although a sale thereof should not prove to be absolutely necessary.

Provision that the bankers shall, as between themselves, stand in precisely the same situation as if their affairs had been settled under a joint commission of bankrupt.

FOR CARRYING ON A BANKING CONCERN UNDER INSPECTORS.

and have the same or the like discharges, or as the case in point of law requires, the same or the like remedies as near as may be, or as he or they respectively would have had, as to or against each other, or against any one or more of them, his or their heirs, executors, or administrators, in case they had all become bankrupts, and had been all declared bankrupts under a joint commission of bankruptcy against them, and each of them had severally obtained a certificate under the said commission of bankrupt, and their estates and effects respectively had been sold under such commission of bankrupt, and the produce thereof paid and applied, or divided by the said [*inspectors*], as assignees under such commission of bankrupt, so that on the one hand, no one or more of them the said [*bankers*], his or their heirs, executors, or administrators, may remain liable to the other or others of them, his or their heirs, executors, or administrators, for any debt or debts which would have been discharged or released by such bankruptcy or commission thereof, and certificates under the same; and so that on the other hand, no one or more of them, his or their heirs, executors, or administrators, may be discharged from any debt or debts to which he or they would have been liable, in case of such bankruptcy or commission thereon, and certificates under the same. IN WITNESS, &c.

ON WINDING UP A TRADER'S AFFAIRS FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

DEED *of* COVENANT *between a* TRADER *and his* CREDITORS, *in regard to the Sale and Conversion into Money of the Stock in Trade and Effects of the Trader under the Controul of* INSPECTORS, *and the Division of the Proceeds amongst the Creditors, in Satisfaction of their Debts.*

Parties.

THIS INDENTURE, made the first day of , 18 , BETWEEN [*debtor*] of street, in the parish of, &c. of the first part; [*one inspector*] of, &c. [*another inspector*] of, &c. and [*third inspector*] of, &c. (being respectively creditors of the said [*debtor*]), of the second part; and the several other persons whose names are mentioned in the schedule hereunder written or hereunto annexed, and whose names and seals are hereunto subscribed and affixed by themselves, or by their agents duly authorized in that behalf, (being also respectively creditors of the said [*debtor*]), of the third part; WHEREAS the said [*debtor*] hath, for some time past, carried on in aforesaid, the trade or business of a [ ], and in the course of such trade or business hath become indebted to the several persons whose names are mentioned in the said schedule hereunder written or hereunto annexed, in the several sums of money set opposite to their respective names in the same schedule; AND WHEREAS the said [*debtor*] is possessed of, or entitled to a considerable stock in trade as a [ ], and also to divers debts or sums of money which have become due and owing to him in the course of his said trade or business, amounting in the whole to the sum of pounds and upwards, and also to the household goods and furniture, fixtures, and other effects, which are now in, upon, or about his dwelling house, warehouse, and other premises in aforesaid; AND WHEREAS at a meeting of the creditors of

Recites that the debtor has been in trade, and thereby contracted the debts mentioned in the schedule;

that he is possessed of a considerable stock in trade, some debts, &c.

and that at a meeting of his

ON WINDING UP A TRADER'S AFFAIRS, FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

the said [*debtor*], held at , on the day of now last past, it was proposed and agreed, that the said stock in trade, debts, and effects, of or to which the said [*debtor*] is so possessed or entitled as aforesaid, should be sold, disposed of, collected, and got in, by or under the superintendence of the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, in manner hereinafter mentioned, and that the monies which should arise thereby should be paid or applied in manner hereinafter expressed; *And* that the said [*inspectors*], and the survivors and survivor of them, and the executors and administrators of such survivor, should have such powers and authorities as are hereinafter given; *And* that the said several parties hereto should enter into the covenants and arrangements hereinafter on their respective parts contained: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the premises, and particularly of the covenants and agreements hereinafter contained, on the part of the said parties hereto of the second and third parts to be observed and performed, HE the said [*debtor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*inspectors*], and each of them, their, and each of their executors and administrators, in manner following, (that is to say); that it shall and may be lawful to and for the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, to sell, dispose of, collect, and get in, all the said stock in trade, debts, and other effects of or to which the said [*debtor*] is so possessed or entitled as aforesaid, at such time or times, and in such manner, as to them or him shall seem proper and advisable; *And* also, that he the said [*debtor*], his executors and administrators, shall and will enter into, make, do, execute, take, and adopt all such contracts, agreements, covenants, assignments, assurances, acts, deeds, proceedings, matters, and things for enabling the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, to exercise the aforesaid power or authority, and carry such sales and dispositions as aforesaid into full and complete

creditors it was agreed, that the stock and debts, &c. should be sold and got in under the superintendence of inspectors; that the monies should be applied as after mentioned; and that the parties should enter into the covenants hereinafter contained.

First witnessing part.

The debtor covenants with the inspectors, that they may sell the stock and get in the debts, as they think most expedient; that the debtor will do all acts necessary to carry such sales, &c. into effect;

and to the best of his ability aid the inspectors therein;

ON WINDING UP A TRADER'S AFFAIRS FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

effect, as they the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, shall think expedient, and direct or require; *And further*, that he the said [*debtor*] shall and will, to the best of his ability, immediately after being thereto required, aid and assist the said [*inspectors*], and the survivors and survivor of them, and the executors or administrators of such survivor, in the sale, disposal, collection, and getting in, of his said stock in trade, debts, and effects, or any of them, or any part thereof, and in all matters and things relating thereto; *And* shall and will make and give true, full, and correct accounts and explanations of all monies, transactions, matters, and things, which he the said [*debtor*] has received or been engaged or concerned in, in relation to his said trade or business, or which he may hereafter receive or be engaged or concerned in, by or under the direction or authority of the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, by virtue of these presents, whenever the same shall be required by the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, or such accounts or explanations as shall be necessary or expedient for enabling them or him to carry the purposes of these presents into effect; *And* that he the said [*debtor*], his executors or administrators, shall not nor will, without the consent in writing of the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, for that purpose first had and obtained, receive or take into his or their possession, any of the said stock in trade, debts, and effects hereinbefore mentioned, or release or discharge any of the said debts, or release or discontinue or become nonsuit in any action or suit which shall be commenced or brought for the recovery of the same stock in trade, debts, or effects, or any of them; AND for the better enabling the said [*inspectors*], and the survivors and survivor of them, and the executors or administrators of such survivor, to sell, dispose of, collect, and get in the said stock in trade, debts, or effects, in manner aforesaid, the said [*debtor*] *Doth* hereby irrevocably make, nominate, constitute, and appoint, and in his place and stead, put the

and keep and furnish true accounts of all his proceedings in relation thereunto;

and that he will not, without the consent of the inspectors, release debts or actions.

Power of attorney from the debtor to the inspectors, for better enabling them to act in his affairs.

said [*inspectors*], and the survivors and survivor of them, and the executors and administrators of such survivor, to be the true and lawful attornies and attorney of him the said [*debtor*], to ask, demand, sue for, recover, and receive, of and from all and every persons and person who are, is, or shall or may be liable to deliver or pay the same respectively, the said stock in trade, debts, and effects, and every or any of them, and every or any part thereof, *And* on payment or delivery thereof, or of any part thereof respectively, to give, sign, and execute receipts, releases, acquittances, and other discharges for the same respectively, *And* on non-delivery or non-payment thereof, or of any part thereof respectively, to bring, commence, carry on, and prosecute any action or actions, suit or suits, or other proceeding or proceedings whatsoever, for enforcing the delivery or payment of the same, as to them or him shall seem reasonable and proper, *And* also to adjust, settle, compromise, and compound all accounts, reckonings, transactions, matters, and things whatsoever, relating to the said stock in trade, debts, and effects, and every or any of them, and every or any part thereof, *And* for all or any of the purposes aforesaid, to use the name of the said [*debtor*], and also for all or any of the said purposes, from time to time to substitute or appoint any attorney or attornies under them or him, and to revoke and alter, or vary such substitution or appointment at pleasure, *And* generally to do, execute, and perform any other act, deed, matter, or thing whatsoever, relative to the premises, as fully and absolutely to all intents and purposes, as he the said [*debtor*] could or might do in his own proper person if these presents had not been made or executed; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties to these presents, and particularly by the said [*debtor*], that the said [*inspectors*], and the survivors and survivor of them, and the executors or administrators of such survivor, shall stand and be possessed of and interested in the monies which shall arise from such sale, disposition, collection, and getting in as aforesaid, upon the trusts following, (that is to say); *Upon trust*, that they the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, do and shall with and

ON WINDING UP A TRADER'S AFFAIRS, FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

Declaration that the inspectors shall stand possessed of the money to arise from such sales, &c. Upon the trusts following; *viz.*

to pay all the expenses of preparing and executing

ON WINDING UP A TRADER'S AFFAIRS FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

these presents, and a duplicate thereof,—

out of the said monies, in the first place, pay and discharge all the costs and expenses of preparing, perfecting, and executing these presents, and a duplicate thereof; *And* in the next place, pay, retain, discharge, or satisfy, all the costs, charges, and expenses, which shall be incurred or sustained in or about such sale, disposition, collection, and getting in as aforesaid, or in relation thereunto, or otherwise in or about the exercise or execution of the powers or provisions in these presents contained, or any of them; *And* in the next place, pay or cause to be paid, rateably and proportionably, and without any preference or priority, to the several persons whose names are mentioned in the schedule hereunder written or hereunto annexed, the several sums of money set opposite to their respective names in the same schedule; *And* do and shall pay or cause to be paid, the surplus or residue of the said monies (if any), which shall remain after answering the trusts and purposes aforesaid, unto the said [*debtor*], his executors, administrators, or assigns, for his or their own absolute use and benefit; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, shall not under the trusts aforesaid be obliged to pay or divide the said trust monies in manner aforesaid, except when the same shall amount to the sum of two shillings and sixpence in the pound, on all the said debts, unless a majority of the creditors of the said [*debtor*] present at a meeting to be called for that purpose by four or more of the said creditors, and of which ten days previous notice shall be given in one of the London daily newspapers, shall direct the contrary, or unless less than that sum shall be sufficient to pay so much of the said debts as shall for the time being remain unpaid; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that the said [*inspectors*], and the survivors and survivor of them, and the executors or administrators of such survivor, shall from time to time, at their or his discretion, lay out and invest so much of the said trust monies as shall not for the time being be required for the purposes of these presents, either in the

to pay or retain all the costs incurred about such sales, &c.

then to pay, rateably to the several creditors, the sums set opposite to their names in the schedule; and to pay the surplus (if any) to the debtor.

Proviso that the inspectors shall not be obliged to pay a dividend, except the same shall amount to 2*s.* 6*d.* in the pound, unless the creditors, at a meeting for that purpose, direct the contrary, or less than that sum be sufficient to pay so much of the debts as remain unpaid.

Proviso that the inspectors shall invest so much of the trust monies as shall not be required for the purposes aforesaid in the bank of England, in navy or exchequer bills,

ON WINDING UP A TRADER'S AFFAIRS, FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

Bank of England in their or his names or name, or in the purchase of navy or exchequer bills, or in the parliamentary stocks or public funds of Great Britain, and shall stand possessed of the interest, dividends, and annual produce (if any) which shall arise from or by means of such last mentioned investment, upon the same trusts as are hereinbefore declared of the monies from which such interest, dividends, or annual produce shall have arisen or been made; PROVIDED ALSO, and it is hereby further agreed and declared between and by the said parties hereto, that while the said [*debtor*] shall aid and assist the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, in or about the performance or exercise of the trusts or powers herein declared and contained, it shall be lawful for them or him, out of the said trust monies, to pay or allow to the said [*debtor*], for the support of himself and his family, any sum or sums of money they or he shall think proper, not exceeding the sum of pounds per week; PROVIDED FURTHER, and it is hereby also agreed and declared between and by the said parties hereto, that if any of the persons whose names are mentioned in the said schedule hereunder written or hereunto annexed, shall neglect or refuse, for the space of fourteen days next after being thereunto requested, to sign or execute these presents, or a duplicate thereof, or otherwise to accede or agree to these presents, it shall be lawful for the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, to compound with the person or persons for the time being so neglecting or refusing as aforesaid for the settlement of his, her, or their debt or respective debts, and to allow and pay to such person or persons, out of the aforesaid trust monies, in full satisfaction of his, her, or their debt or respective debts, any sum or sums of money they or he shall think proper, so as such sum or sums of money do not exceed, as to any debt which shall amount to more than the sum of twenty pounds, a sum equal to five shillings in the pound, on the amount of such debt or respective debts; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that in reference to the said last mentioned provision, the

or in the public funds, and shall stand possessed of the interest thereof, upon the trusts declared of the trust monies.

Proviso that while the debtor assists the inspectors in the execution of the trusts herein contained, it shall be lawful for them to allow him any sum, not exceeding —*l.* a-week, for his support.

Proviso that if any of the creditors neglect for fourteen days to execute or accede to these presents, the inspectors may compound with them for the settlement of their debts.

Declaration, that the costs incurred under the last provision shall be

ON WINDING UP A TRADER'S AFFAIRS, FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

costs and expenses (if any) which have been or shall be hereafter incurred in or for the recovery of the said debt or debts so due and owing by the said [*debtor*] as aforesaid, or any of them, shall be included in and considered as part of the same debt or respective debts; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if any of the several persons whose names are mentioned in the said schedule hereunder written or hereunto annexed, shall neglect or refuse to execute these presents or a duplicate thereof, or otherwise to accede or agree to these presents during the continuance of the trusts hereby created, and shall not be compounded with under the power or provision hereinbefore for that purpose contained, *Then* and in every such case, it shall be lawful to and for the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, and they and he are and is hereby required to pay to the said [*debtor*], his executors or administrators, for his and their own use and benefit, the sum or sums of money which would, under or by virtue of these presents, have been payable to the persons or person so neglecting or refusing as last aforesaid, in case such person or persons had not so neglected or refused as last aforesaid, any thing hereinbefore contained or to be inferred to the contrary thereof in anywise notwithstanding: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that nothing herein contained, shall extend or be construed to extend to prevent the parties hereto of the second and third parts, their respective executors or administrators, from suing or prosecuting any other person or persons other than and besides the said [*debtor*], his executors or administrators, who is, are, shall, or may be liable or accountable to make good all or any part of their said respective debts, either as drawers, endorsers, or acceptors of any bill or bills of exchange or promissory note or notes, or as being jointly or severally bound in any bond or bonds, obligation or obligations, or other instrument whatsoever, or otherwise howsoever, as if these presents had never been made; PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties hereto, that if any

considered as part of the debt.

Proviso that if any of the creditors neglect to execute or accede to these presents, and shall not be compounded with, the inspectors shall pay to the debtor the sums to which such creditors would have been entitled if they had executed or acceded to these presents.

Proviso that nothing herein contained shall prevent the creditors suing any other person besides the debtor, who may be liable to pay any part of their debts.

Proviso that if any dispute arises respecting the validity

ON WINDING UP A TRADER'S AFFAIRS, FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

dispute or difference shall hereafter arise respecting the validity or amount of any of the said debts mentioned and set forth in the said schedule hereunder written or hereunto annexed, such dispute or difference shall be referred to the arbitration and determination of two indifferent persons, one to be chosen by the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, and the other to be chosen by the party in respect of whose debt such dispute or difference shall arise; or if such two indifferent persons shall disagree in the premises, then of such third person as such two indifferent persons shall nominate and appoint for that purpose, such nomination and appointment to be made before the two indifferent persons shall proceed on the reference, and the award or determination of such two indifferent persons, or of such third person (as the case may be), shall be binding and conclusive on all parties: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that in order that the said stock in trade and effects of the said [*debtor*] may be sold and disposed of to the best advantage, it shall be lawful for the said [*inspectors*], and the survivors and survivor of them, and the executors or administrators of such survivor, to carry on the trade or business of the said [*debtor*], during such time as they or he shall think proper, not exceeding two years, to be computed from the day of the date of these presents; *And* for that purpose to rent such premises and employ such shopmen, clerks, servants, and other persons, as to them or him shall seem necessary or expedient, and at pleasure to remove such clerks, shopmen, servants, and other persons, and appoint and substitute others in their stead, and to allow to them respectively such salaries, wages, and other recompense, as they or he shall think reasonable and proper; *And* generally to do and execute all such acts, deeds, matters, and things for carrying on the said trade or business, and settling and winding up the affairs and concerns of the said [*debtor*], in such and the same manner, and as fully to all intents and purposes, as if they the said [*inspectors*], or the survivors or survivor of them, or the executors or administrators of such survivor, were or was the

or amount of any of the debts, such dispute shall be settled by arbitration.

Proviso that in order that the effects of the debtor may be disposed of to the best advantage, the inspectors may carry on his business for any term not exceeding two years;

and for that purpose rent such premises, and employ such persons as to them may seem necessary;

and generally to do all such things for settling the affairs of the debtor as they might do if they were the absolute proprietors of the business.

ON WINDING UP A TRADER'S AFFAIRS, FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

absolute proprietors or proprietor of the said trade or business, affairs, and concerns; *And* whatsoever, &c. (*the inspectors do, the debtor will confirm;*) AND each of them the said [*inspectors*], so far as relates to the acts and deeds of himself and his respective executors and administrators, but not further or otherwise, doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said several persons, parties hereto of the third part, and each of them, and their, and each of their executors and administrators, that they the said [*inspectors*] and the survivors and survivor of them, and the executors or administrators of such survivor, shall and will, to the best of their and his judgment and abilities, exercise, execute, and perform the several powers, authorities, and trusts hereby given to, or reposed in them or him; *And* shall and will within two years, to be computed from the day of the date of these presents (if the same be practicable) sell and dispose of, collect, and get in all and singular the stock in trade, debts, and effects hereinbefore mentioned, and finally and completely settle, adjust, and wind up the said affairs and concerns of the said [*debtor*], and pay, divide, and apply in manner hereinbefore mentioned and expressed, all and singular the monies which shall arise thereby, or come to their or his hands by virtue of these presents: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and particularly of the covenants and agreements hereinbefore contained on the part of the said [*debtor*] to be observed and performed, EACH and every of them the said several persons, parties hereto of the second and third parts, doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*debtor*], his executors and administrators, that if he the said [*debtor*], his executors or administrators, shall and do well and truly observe, perform, and keep all and every the covenants and agreements hereinbefore contained on his and their part to be observed, performed, and kept, as and when the same respectively ought to be observed, performed, and kept, and according to the true intent and meaning of these presents, *Then* and in such case, they

The inspectors covenant with the other creditors, that they will, to the best of their judgment, perform the trusts reposed in them, and within two years (if practicable) settle and wind up the affairs of the debtor, and pay, in manner hereinbefore mentioned, the monies which shall come to their hands by virtue of these presents.

Second witnessing part. The creditors covenant with the debtor, that if he performs the covenants hereinbefore on his part contained, they will release him from their several debts, and from all claims on account of the same;

ON WINDING UP A TRADER'S AFFAIRS, FOR THE BENEFIT, OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

the said several persons, parties hereto of the second and third parts, their respective executors and administrators, shall and will, on or before the day of , at the expense of the said trust premises, well and effectually release and discharge the said [*debtor*], his executors and administrators, and his and their estate and effects whatsoever and wheresoever, of and from the several debts or sums of money set opposite to the respective names of the said several persons, parties hereto of the second and third parts, in the said schedule hereunder written or hereunto annexed, and all claims and demands whatsoever for or on account of the same, or for or on account of any matter, cause, or thing whatsoever, in anywise relating to the same; *And* that in the mean time, and until the said [*debtor*], his executors or administrators, shall neglect, or refuse, or fail to observe, perform, and keep the said covenants and agreements hereinbefore contained on his and their part to be observed, performed, and kept, or some or one of them, or such release and discharge as aforesaid shall be executed, they the said several persons, parties hereto of the second and third parts, or their respective executors or administrators, shall not nor will, by themselves, or by any person or persons acting under their authority or with their consent, commence, prosecute, or carry on any action or actions, suit or suits, or other proceeding or proceedings whatsoever, at law or in equity, against him the said [*debtor*], his executors or administrators, or make any attachment of or upon his or their estate or effects for or by reason of any such debts, claims, or demands as aforesaid, or in any other manner whatsoever molest or disturb the said [*debtor*], his executors or administrators, for or in respect of the same debts, claims, or demands, or any of them; *And further,* that if any of the said persons, parties hereto of the second and third parts, their or any of their executors or administrators, shall act contrary to, or infringe the last mentioned covenant and agreement, *Then,* and in every such case, the said [*debtor*], his executors and administrators, shall be, and by these presents is and are clearly acquitted, exonerated, and for ever discharged, of and from the debt or debts due and owing to the person or persons by whom,

and that until the debtor refuses to perform the said covenants, or such release shall be executed, the creditors will not commence any action or suit against him in respect of their debts;

and that if any of the creditors shall act contrary to the last mentioned covenant, the debtor shall be discharged from the debt of such creditor.

ON WINDING UP A TRADER'S AFFAIRS, FOR THE BENEFIT OF CREDITORS, UNDER THE CONTROUL OF INSPECTORS.

Power of attorney from the creditors to the inspectors, to execute releases to debtor in their names.

or under whose direction, the said [*debtor*], his executors or administrators, or his or their estates or effects, shall have been sued, attached, molested, or disturbed as aforesaid: And for the better securing to the said [*debtor*], his executors or administrators, such release and discharge as hereinbefore is mentioned, Each and every of them the said several persons, parties hereto of the third part, doth by these presents make, nominate, constitute, and appoint the said [*inspectors*], and the survivors and survivor of them, and the executors or administrators of such survivor, to be the true and lawful attornies and attorney of them the said several persons, parties hereto of the third part, for and in the name of them, and every of them, to sign, seal, deliver, and execute unto the said [*debtor*], his executors or administrators, a good and effectual release and other discharge, or good and effectual releases and other discharges, for the several debts mentioned and set forth in the said schedule hereunder written or hereunto annexed, and all actions, suits, claims, and demands for or on account of the same, in case and so soon as he the said [*debtor*], his executors or administrators, shall, in the opinion and to the satisfaction of the said [*inspectors*], or the survivors or survivor of them, and the executors or administrators of such survivor, have duly observed, performed, and kept the said several covenants and agreements hereinbefore contained on his or their part to be observed, performed, and kept as aforesaid. In witness, &c.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4. C. 16. S. 4.

ASSIGNMENT *of* ALL *a* TRADER'S *Effects for the Benefit of his* CREDITORS *generally;—pursuant to the fourth Section of the New Bankrupt Act,* 6 *Geo. IV. c.* 16 (*a*).

THIS INDENTURE, made the day of , 1827, BETWEEN [*debtor*] of, &c. of the first part; [*one trustee*] of, &c. and [*other trustee*], of, &c. (being respectively creditors of the said [*debtor*]), of the second part; and the several persons whose names and seals are hereunto subscribed and affixed (*b*), (being also creditors of the said

Parties.

(*a*) The section of the New Bankrupt Act here referred to, is in these words:

"And be it enacted, that where any such trader shall, after this act shall have come into effect, execute any conveyance or assignment by deed to a trustee or trustees, of all his estate and effects for the benefit of all the creditors of such trader, the execution of such deed shall not be deemed an act of bankruptcy, unless a commission issue against such trader within six calendar months from the execution thereof by such trader; provided that such deed shall be executed by every such trustee within fifteen days after the execution thereof by the said trader, and that the execution by such trader, and by every such trustee, be attested by an attorney or solicitor; and that notice be given within two months after the execution thereof by such trader, in case such trader reside in *London*, or within forty miles thereof, in the *London Gazette*, and also in two *London* daily newspapers; and in case such trader does not reside within forty miles of *London*, then in the *London Gazette*, and also in one *London* daily newspaper, and one provincial newspaper, published near to such trader's residence; and such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee, and of such attorney and solicitor."

Fourth section of the New Bankrupt Act.

(*b*) It is most usual to add here, "by themselves or their respective attornies, legally authorized in that behalf;" but these words are not at all necessary, as the attorney always signs and executes the deed in the name and as the act of his principal.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, C. 16, S. 4.

[*debtor*]), of the third part; WHEREAS the said [*debtor*] is possessed of or entitled to the messuage or tenement and premises in which he now resides, in street aforesaid, for the residue of a term of twenty-one years, which will expire on the twenty-ninth day of September, which will be in the year 1834, at the yearly rent of pounds, payable half-yearly, and under and subject to the usual covenants and agreements entered into by persons holding under leases from [A. B.] of, &c. esquire; AND WHEREAS the said [*debtor*] is absolutely possessed of or entitled to a considerable stock in trade, which is in and upon or about the said messuage or tenement and premises, or some part or parts thereof, *And* also of or to the household goods and furniture, books, pictures, plate, and other articles and things, which are now in and upon or about the same messuage or tenement and premises, or some part or parts thereof; *And* he is also entitled to divers outstanding debts or sums of money due and owing to him in respect of the trade or business of a , which he has for several years past carried on at or upon the messuage or tenement and premises hereinbefore mentioned; *And* he does not know or believe that he is possessed of or entitled to, or in any manner interested in, any other estate, property, or effects whatsoever; AND WHEREAS, at a meeting of the creditors of the [*debtor*], held at the coffee-house, in street, in the city of London, on the day of now last past, it was stated and shewn, by or on the part of the said [*debtor*], to the creditors then and there present, that he the said [*debtor*] was unable to pay the several debts or sums of money in which he was or stood indebted to his creditors, *And* that it was very improbable that he would become able to do so by the further carrying on of his said trade or business; *And* it was thereupon agreed, that the said [*debtor*] should make and enter into the assignment and covenants hereinafter on his part contained; *And* that the said parties hereto of the second and third parts, should enter into and execute the covenants and releases hereinafter on their respective parts contained: NOW THIS INDENTURE WITNESSETH, that in

Recites that the debtor is possessed of the premises in which he resides, for the remainder of a term, &c.;

that he is absolutely possessed of the stock in trade and household furniture in and about the premises;

and also to divers debts due to him in respect of his trade;

and does not know that he is possessed of any other property;

that a meeting of the creditors, held at , on , it was shewn that the debtor was unable to pay his debts;

and that it was thereupon agreed that the parties hereto should make and enter into the assignment, releases, and covenants hereinafter contained.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, c. 16, s. 4.

pursuance and part performance of the said agreement, and in consideration of the premises, and, &c. (*nominal consideration from the trustees*), HE the said [*debtor*] *Doth* by these presents grant, bargain, sell, assign, transfer, and set over unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT and those the said messuage or tenement and premises in street aforesaid, in which he the said [*debtor*] now resides and has so carried on his said trade or business of a as aforesaid, and all warehouses, buildings, offices, and appurtenances to the same belonging or in anywise appertaining; *And also* all and singular the stock in trade, goods, wares, merchandizes, household goods, and furniture, and other articles and things which are now in, upon, or about the same messuage or tenement and premises, or any of them, or any part or parts thereof; *And also* all and singular the debts or credits, and sums of money, which are now due and owing to the said [*debtor*] from any person or persons whomsoever; *And* all and singular other the personal (*c*) estate and effects whatsoever and wheresoever (if any) of him the said [*debtor*]; *And* all the estate, right, &c.: TO HAVE, HOLD, RECEIVE, and take the said messuage or tenement, stock in trade, household goods and furniture, debts, monies, effects, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, unto the said [*trustees*], their executors, administrators, and assigns, in as full, ample, and beneficial a manner, as the said [*debtor*], his executors or administrators, could have had, held, and enjoyed the same, if these presents had not been made and executed; *But* nevertheless upon the trusts, and for the intents and purposes hereinafter declared or mentioned concerning the same; AND the said [*debtor*] doth hereby,

First witnessing part.

The debtor assigns to the trustees,

the leasehold premises, stock in trade, furniture, and debts hereinafter mentioned;

and all other his personal estate whatsoever.

Habendum to the trustees as fully as the debtor held the same; but on the trusts aftermentioned.

(*c*) Some persons think it proper, as the act refers to a conveyance of *all* the trader's estate,—to make the debtor by the first witnessing part convey all his *real* estate, in general words, and have a lease for a year for it, although it be not known that such debtor has any real estate. It seems, however, scarcely necessary to incur this extra expense, unless there is some ground to believe that the debtor has real property.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, c. 16, s. 4.

&c. (*appointment of the trustees to be attornies* (*d*), *to get in the debts, &c. see ante*, 491, 542); AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that the said trustees, and the survivor of them, and their or his executors, administrators, or assigns, shall stand and be possessed of, and interested in the said messuage or tenement, stock in trade, household goods and furniture, debts, monies, effects, and premises, hereinbefore assigned, or intended so to be, and every part thereof, upon the trusts and in manner following, (that is to say); *As to, for, and concerning* the said messuage or tenement and leasehold premises hereby assigned, or intended so to be, and their appurtenances, *Upon trust* that they the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall permit and suffer the same to be held, occupied, and enjoyed, for the purposes of carrying into execution the trusts hereinafter declared of the said stock in trade, household goods, and furniture hereby

Power of attorney.

Declaration that the trustees should stand possessed of the assigned premises upon the trusts following, viz.;

As to the messuage, &c. to permit the same to be used for carrying on the trusts, and then to sell or let the same;

(*d*) After the usual power to demand delivery and payment of the goods and monies, &c. and to give receipts, or on non-delivery or non-payment to take legal proceedings, &c. the following is sometimes adopted, with a little variation according to circumstances:

General power of attorney in a creditor deed.

"*And* also to adjust, liquidate, and finally settle any account or accounts now open, depending, or remaining unsettled between the said [*debtor*] and any other person or persons whomsoever; *And* to receive or pay such balance or balances as upon the settling of such account or accounts, shall appear to be due to or from the said [*debtor*], as the case shall happen to be, so as no payment shall be made to any such other person or persons as aforesaid, contrary to or in breach of the trusts hereby created, or the true intent and meaning of these presents; *And* in case of refusal to pay or non-payment of all or any part or parts of any balance or balances which shall appear to be due or owing to the said [*debtor*], to compel and enforce the payment thereof by all or any of the ways and means aforesaid; *And* to sue and arrest, seize, sequester, or imprison, the person or property of any person or persons who are or is indebted, or who shall or may here-

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, C. 16, S. 4.

assigned, or intended so to be; *And*, after the said trusts shall be executed, *Then* do and shall, with all convenient speed, sell and dispose of the said messuage or tenement and premises, for the then residue of the said term of twenty-one years therein, or for any part or portion thereof, at such price or prices, upon such conditions, and in such manner, as they or he shall think expedient and proper; *And* for that purpose do and shall enter into, make, and execute, all such contracts, assignments, demises or underleases, acts, deeds, and things, as to them or him shall seem meet; *And as to, for, and concerning* the said stock in trade, wares, merchandises, household goods and furniture, debts, monies, and other personal estate and effects hereby assigned, or intended so to be, (except the said leasehold premises,) *Upon trust* that they the said [*trustees*] or the survivor of them, or the executors, administrators, or assigns of such survivor, *Do* and

and as to the stock in trade, &c. to sell and convert the same into money.

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after be indebted to the said [*debtor*], or who shall be liable for, or compellable to account for or deliver, any of the stock in trade, goods, merchandizes, and effects hereinbefore assigned, or intended so to be, *And* such person or persons out of prison to release or discharge, as they the said trustees or trustee for the time being shall think fit; *And* also to compound and compromise, or submit to arbitration, any debt or debts, or sum or sums of money, now due or owing to the said [*debtor*], from any person or persons whomsoever, or any other claim or demand, dispute, difference, or controversy now subsisting or depending, or which may arise between the said [*debtor*] and any other person or persons whomsoever; *And* for that purpose, for and on the behalf of the said [*debtor*], and in his name, or in the name or names of the said trustees or trustee for the time being, as they or he shall think fit, to enter into, sign, seal, execute, and deliver one or more bond or bonds of arbitration, or instrument or instruments of submission, to stand to, abide by, and perform, the award, order, and arbitration, or awards, orders, and arbitrations of such arbitrator or arbitrators as shall be thereby appointed; *And* to make, sign, seal, and execute all other lawful deeds, acts, matters, and things, as may be thought useful or ne-

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, C. 16, S. 4.

shall absolutely sell, dispose of, collect and get in the same, or otherwise convert the same into money, by such means, at such times, and generally in such manner as they or he in their or his own judgment and discretion shall think fit, and most for the benefit of the several persons interested therein: PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by the said parties hereto, that in order that the said stock in trade, goods, merchandises, and effects hereinbefore assigned, or intended so to be, may be sold and disposed of, and the affairs and concerns of the said debtor concluded, settled, and wound up to the best or greatest advantage, it shall be lawful for the said [*trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, to carry on the trade of the said [*debtor*] during such time or times as they or he shall think proper, not exceeding in the whole two years, to be computed from the day of the date of these presents; *And* for the better

Clause enabling the trustee to carry on the trade, &c.

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cessary for the recovering or receiving of all or any of the said stock in trade, goods, merchandises, debts and effects hereinbefore assigned, or intended so to be, or any part thereof respectively, or for acquitting and discharging the same to the person or persons from whom the same may be recovered or received, or who shall or may be liable to deliver or pay or account for the same; *And* for all or any of the purposes aforesaid, to use the name of the said [*debtor*]; *And* for the better effectuating the purposes aforesaid, the said [*debtor*] doth hereby authorise and empower the said [*trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, to make, constitute, depute, and appoint one or more person or persons as substitute or substitutes in their or any of their place or stead, with full power and authority to execute and perform all and every or any of the powers and authorities hereby vested and given in and to them or him, as fully and effectually to all intents and purposes, as he the said [*debtor*], or they or he the said trustees or trustee for the time being, or any of them, might or could do if personally present at the doing thereof; *And* such person or persons to displace and remove, and the powers and authorities

and more effectually enabling them and him so to do, and also to conduct, manage, and perform all business, matters, and things necessary to be done and performed in relation to the said trade, or the execution of the trusts hereinbefore declared, it shall be lawful for them or him the said trustees or trustee for the time being, to employ such shopmen, accountants, clerks, agents, and servants, as to them or him shall seem necessary; *And* at pleasure to remove them, and appoint others in their stead; *And also* to allow and pay to them such salaries or wages respectively as they the said trustees or trustee for the time being shall think proper; *And* generally to do and execute all other matters and things for the carrying on the said trade, and for concluding, settling, and winding up the affairs and concerns of the said [*debtor*], in such and the same manner, and as fully to all intents and purposes whatsoever, as if the said trustees or trustee for the time being were or was the absolute and sole proprietors or proprietor of the said trade, affairs, and concern: AND IT IS HEREBY AGREED AND DECLARED between and by, &c. (*that the trustees shall stand possessed of the monies which*

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, c. 16, s. 4.

Declaration of trust of the monies which shall arise from sales, &c.

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given to him or them to revoke and annul; *And* another or others in the place or stead of such person or persons so displaced and removed to appoint, and with the same or any other powers or authorities to invest; AND the said [*debtor*] doth hereby give and grant unto the said [*trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, and their and his substitute or substitutes, full power and authority to act in the premises, as fully and effectually to all intents and purposes as he the said [*debtor*] could or might do if these presents had not been made; *And* whatsoever the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, or their or his respective substitute or substitutes, shall lawfully do or cause to be done in or about the premises, the said [*debtor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees*], their executors, administrators, and assigns, to allow, ratify, and confirm."

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, C. 16, S. 4.

shall arise from such sale, &c. as aforesaid, Upon trust to pay the expenses of preparing the deed, and executing the trusts; then to the parties of the second and third parts, the amount of the debts set opposite to their respective names in the schedule; and lastly, the surplus (if any) to the debtor, as ante, p. 492—493, and 543—4 (*e*). PROVIDED ALWAYS, and it is hereby further agreed and declared, &c. that it shall be lawful for the said trustees or trustee for the time being, out of the said trust estate, monies, and premises, to pay and allow to the said [*debtor*], for the support of himself and his family, either weekly or monthly, any sum not exceeding the sum of per week, so long as he the said [*debtor*] shall aid and assist the said trustees or trustee for the time being in the execution and performance of the several trusts, powers, and authorities herein respectively declared and contained; PROVIDED ALWAYS, and, &c. that it shall be lawful for the said trustees or trustee for the time being, with and out of

Provisoes for enabling the trustees to allow the debtor a weekly sum for his support, while he assists them in the trusts;

and to pay his expenses in defending actions, &c.

(*e*) The following short declaration of trust will sometimes be useful:

Short declaration of trust of the monies payable to the trustees under a creditor deed.

"AND IT IS HEREBY AGREED, &c. that the said [*trustees*], their executors, administrators, and assigns, shall stand and be possessed of, and interested in all monies which shall come to their hands under or by virtue of these presents, *Upon trust* thereby and thereout, to retain to and reimburse themselves all such costs, charges, and expenses, as they respectively shall or may sustain, expend, or be put unto, in or about the preparing these presents, and in the execution of the trusts hereby created, or in relation thereunto; *And* also to pay to the said [*debtor*], during his assistance in the execution of the said trusts, such a sum or sums of money, for the support of himself and his family, not exceeding the sum of pounds, as they shall think fit; *And* in the next place, to pay and discharge such and so many of the debts now owing by the said [*debtor*] as shall not amount to the sum of twenty pounds for any one debt, as they shall think proper; *And* in the next place, to pay and discharge the residue of the said debts under twenty pounds each, and

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, c. 16, s. 4.

the monies which shall come to their or his hands by virtue of the trusts aforesaid, to pay or allow unto the said [*debtor*], all sum and sums of money, costs and expenses (if any), which at any time during the continuance of the said trusts he shall or may pay, incur, or be put unto by reason of any action, suit, claim, or demand, which shall be brought, commenced, or made against or upon him by any creditor or creditors of him the said [*debtor*], who shall for the time being neglect or refuse to join in and execute these presents, or otherwise assent or accede to the same, or so much and such part of the same sum or sums of money, costs and expenses, as the said trustees or trustee for the time being shall think proper; *And also*, with and out of the said monies to pay and perform the rent and covenants payable and to be performed in respect of the aforesaid leasehold premises, prior to the same being sold as aforesaid, as and when the said rent and covenants respectively ought to be paid and performed: PROVIDED ALWAYS, and, &c. that the said trustees or trustee for the time being, shall not, in pursuance of the trusts hereinbefore declared, pay, at any one time, more or less than three shillings in the pound on the said debts, men-

Proviso for preventing the the trustees from making a dividend, except when the funds will pay 3*s.* in the pound.

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also the several debts due and owing to them the said [*trustees*], and the said creditors, parties to these presents of the third part, and which are set opposite to their respective names in the schedule hereunder written, or so much thereof as the said trust-monies, after payment of all such costs, charges, and expenses as aforesaid, shall extend to pay, by an equal pound-rate, according to the amount of the several debts aforesaid, and without any preference or priority of payment; the same trust-monies to be from time to time paid and distributed in manner aforesaid, when and so often as the same shall amount to the sum of two shillings in the pound on all such debts; *And* in case there shall be any surplus of the said trust monies, after full payment and satisfaction of such costs, charges, and expenses as aforesaid, and the whole of the said debts, *Then*, *In trust* to pay the same unto the said [*debtor*], his exec utors, administrators, or assigns."

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4. C. 16, S. 4.

tioned and set forth in the said schedule hereunder written or hereunto annexed, unless a majority of the creditors, at a meeting to be held for that purpose, as hereinafter is mentioned, shall direct the contrary, or unless less than that sum shall be sufficient to pay so much of the said debts as shall for the time being remain unpaid, or shall exhaust the whole of the trust monies and premises remaining unapplied and undisposed of by virtue of these presents: PROVIDED ALWAYS, and, &c. that all the monies which shall be recovered, received, or otherwise come to the hands of the said trustees or trustee by virtue of these presents, shall forthwith be paid by them or him from time to time into the banking-house of Messrs. and Co. at , or such other banking-house as a majority of creditors, at a meeting to be held for that purpose, as hereinafter is mentioned, shall from time to time order or direct; *And* the monies shall be there placed to the account of the said trustees or trustee for the time being: PROVIDED ALWAYS, and, &c. that if at any time or times the said monies shall be more than sufficient to answer the current expenses and payments necessary to be made in pursuance of these presents, *Then* and so often the said trustees or trustee for the time being, shall lay out so much of the said monies as shall not be immediately required for the above purposes, in the purchase of navy or exchequer bills, or in the public stocks of Great Britain, in order that the same may accumulate in the nature of compound interest, till required for the purposes of these presents: (*Clause for making the trustees' receipts sufficient discharges* (*f*)): PROVIDED ALWAYS, and, &c. that on the day of now next ensuing, and on the day of every successive three calendar months during the continuance of the trusts hereby created, a meeting of the said creditors of the said [*debtor*] shall be

Proviso for paying the trust funds into the bank of Messrs. and Co.

Proviso for investing surplus trust-monies in exchequer bills, &c. till wanted, and to accumulate the interest.

(*f*) Powers for changing and appointing new trustees, and for the indemnity of the trustees, should have been inserted here: the power of appointing new trustees being given to the majority of the creditors present at some meeting to be convened as provided by the next clause.

held at , at o'clock in the forenoon, for the purpose of inspecting and examining the accounts of the said trustees or trustee for the time being, in relation to the estate and effects of the said [*debtor*], and for any other purpose relating to the affairs and concerns of the said [*debtor*], at which time and place the said trustees or trustee, or some person or persons to be authorized by them or him in that behalf, shall attend, and produce to the creditors then and there assembled, a full, true, and particular account of all transactions relating to the said estate and effects of the said [*debtor*], and give to the said creditors such information in regard to the same as they may reasonably require: PROVIDED ALWAYS, and, &c. that it shall be lawful for the said trustees or trustee for the time being, or for any three or more of the creditors of the said [*debtor*], parties to these presents, at any time hereafter, by notice or advertisement, to be inserted in the London Gazette and two of the London daily newspapers, at least fourteen days previously to the proposed time of meeting, to call or convene an extraordinary meeting of the creditors of the said [*debtor*], for any purpose or purposes relating to the affairs and concerns of the said [*debtor*]; *And* to fix such time and place for the said meeting as they or he shall think proper: (*Covenants from the debtor, nearly as ante*, p. 493): AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, (*The creditors covenant with the debtor, see ante, p.* 494) that if these presents shall not become void by virtue of the provisoes hereinafter in that behalf contained, *Then* and in such case, they the said several persons, parties hereto of the second and third parts, their respective partner or partners, or the executors or administrators of them, or their partner or partners respectively, shall and will, within one calendar month next after the day of now next ensuing (*g*), at the expense of the trust premises, (*release the debtor from the debts in the schedule,*

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, C. 16, S. 4.

Provisions for holding and calling meetings of the creditors and trustees.

Second witnessing part.

The creditors covenant to execute releases, if the deed is not avoided under the provision hereinafter contained.

(*g*) Six months from the date of the deed.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, c. 16, s. 4.

&c.) *see ante, p.* 494, 549) ; *And* that in the mean time, and until these presents shall become void as aforesaid, or such releases as hereinbefore mentioned shall be executed, (*the creditors will not sue or molest the debtor, see ante,* 489, 504, 549) ; PROVIDED ALWAYS, and, &c. (*Proviso that nothing hereinbefore contained shall extend to prevent the creditors suing other persons liable for the debts, see ante, p.* 495.)

Proviso that if the debtor is found bankrupt before the —— day of ——, the deed shall be void.

PROVIDED ALWAYS, and it is hereby declared and agreed between and by the said parties hereto, that if the said [*debtor*] shall at any time before the day of (*h*), be duly found and declared a bankrupt, *Then* and, &c. (*the deed shall be void, &c. as ante, p.* 489) ;

Power to the trustees to avoid the deed, if all the creditors who can make the debtor a bankrupt, do not join on or before the — day of ——.

PROVIDED ALWAYS, and it is hereby also agreed and declared between and by the said parties hereto, that if it shall appear to the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, that any one or more of the creditors, whose debt or debts is or are individually or collectively sufficient to support a petition for a commission of bankrupt, hath or have not, by himself or themselves, or his or their lawful attorney or attornies, thereunto legally authorized, duly executed these presents, or a duplicate thereof, on or before the day of now next ensuing (*i*), *Then* and in such case, and thereupon, it shall and may be in the power of and lawful for the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, to declare these presents absolutely null and void, in case they or he shall think it expedient so to do; *And* if they or he shall so declare the same void, but not otherwise, *Then* this indenture, and every thing herein contained, shall thenceforth cease, determine, and be void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding:

Proviso that the execution of the deed by one of several partners shall be sufficient for the validity of the deed.

PROVIDED ALWAYS, and it is hereby lastly, &c. that if any one of any set of partners, creditors of the said [*debtor*] as aforesaid, shall, by himself or his attorney or agent thereunto legally authorized, duly exe-

(*h*) Six months from the date of the deed.

(*i*) Seven months from the date of the deed.

cute these presents, or a duplicate thereof, such execution shall be sufficient for the validity of the same, notwithstanding the same may not be executed by the other or others of the said partners, or by his or their attorney or agent, attornies or agents thereunto legally authorized. IN WITNESS, &c.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS GENERALLY, PURSUANT TO 6 GEO. 4, C. 16, S. 4.

TRUSTEE-DEEDS.

Rules for the appointment of new trustees.

We shall here mention the principal rules relating to the appointment of new trustees, and the transfer of the trust property from the old to the new trustees. In almost all modern deeds, to which trustees are parties, clauses are inserted for changing them in the event of their death, or refusal, or incapacity to execute the trusts. Where therefore such clauses are inserted, the trustees are appointed, and the property transferred, under them; but where they are not inserted, or where an event happens which is not provided for by them, the legislature has provided a mode of appointing new trustees, and of obtaining a transfer of the trust property by means of an application to the court of Chancery.

It will be proper, therefore, first, to consider the mode of appointing new trustees and transferring the trust property, where there are no clauses inserted in the deed or will for that purpose, or the clauses inserted do not apply to the particular event that has happened. This is specified in an act of the present king, 1 Will. 4, c. 60, by which all the other acts on the subject are consolidated and extended. The substance of the act is as follows:

Analysis of 1 Will. 4, c. 60.

The act is entituled, "*An Act for amending the Laws respecting Conveyances, and Transfer of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give effect to their Decrees and Orders in certain Cases.*"

By the first section, all the former acts on the subject are repealed, "except so far as the same relate to stock belonging beneficially to infants or lunatics, and also except as to such proceedings of any description, under the same acts respectively, as shall have been commenced before the passing of this act, (23d July, 1830,) and which may be proceeded in according to the provisions of the said recited acts respectively, or according to the provisions of this act, as shall be thought expedient."

By the second section, rules are laid down for the interpretation of the act, which tend greatly to shorten its provisions; certain general words are used throughout the act, which are to be understood to apply to all matters and things of the same class, "that is to say, those relating to land, to any manor, messuage, tenement, hereditament, or real property of whatever tenure, and to property of every descrip-

tion transferrable otherwise than in books kept by any company or society, or any share thereof or interest therein; those relating to stock, to any fund, annuity, or security, transferrable in books kept by any company or society established or to be established, or to any money payable for the discharge or redemption thereof, or any share or interest therein; those relating to dividends, to interest or other annual produce; those relating to a conveyance, to any fine, recovery, release, surrender, assignment, or other assurance, including all acts, deeds, and things, necessary for making and perfecting the same; those relating to a transfer, to any assignment, payment, or other disposition; those relating to a lunatic, to any idiot or person of unsound mind or incapable of managing his affairs; those relating to an heir, to any devisee or other real representative by the common law or by custom or otherwise; and those relating to an executor, to any administrator or other personal representative; unless there be something in the subject or context repugnant to such construction; and whenever this act, in describing or referring to any trustee or other person, or any trust, land, conveyance, matter, or thing, uses the word importing the singular number or the masculine gender only, the same shall be understood to include and shall be applied to several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, and several trust, lands, stock, conveyance, matters, or things respectively, as well as one trust, land, stock, conveyance, matter, or thing respectively, unless there be something in the subject or context repugnant to such construction."

Section 3 enacts, that where any person seised or possessed of any land, upon any trust or by way of mortgage, shall be lunatic, it shall be lawful for the committee of his estate, by the direction of the lord chancellor, to convey such land, to such person, and in such manner, as the said lord chancellor shall think proper. (See 6 Geo. 4, c. 74, s. 3, with which this section corresponds.)

Section 4 enacts, that where any stock shall be standing in the name of any person who shall be a lunatic, as a trustee or executor, alone or jointly with any other person, *or shall continue to be standing in the name of a deceased person whose executor shall be lunatic*, or shall be otherwise vested in, or *transferrable by*, any person who shall be lunatic, *for the benefit of some other person*, it shall be lawful for the lord chancellor, intrusted as aforesaid, to direct *the committee* to transfer such stock into the name of such person, and in such manner as the said lord chancellor shall think proper, and also to order such person to receive and pay over, *or join in receiving and paying over*, the dividends of such stock, in such manner as the said lord chancellor shall direct. (See 6 Geo. 4, c. 74, s. 4, with which this section corresponds, with the exception of the words in italic.)

Section 5 enacts, that where any such person as aforesaid, being lunatic, shall not have been found such by inquisition, it shall be lawful for the lord chancellor to direct any person to convey *or join in conveying* such land, *or to transfer or join in transferring such stock, and receive and pay over the dividends thereof, as herein-before is mentioned; but where any sum of money shall be payable to such lunatic, no such last-mentioned order shall be made if such sum of money shall exceed seven hundred pounds.* (See 6 Geo. 4, c. 74, s. 6, with which this section corresponds, with the exception of the words in italic.)

Section 6 enacts, that where any person seised or possessed of any land upon any trust or by way of mortgage shall be under the age of twenty-one years, it shall be lawful for such infant, by the direction of the court of Chancery, to convey the same to such person and in such manner as the said court shall think proper. (See 6 Geo. 4. c. 74, s. 2, with which this section corresponds.)

Section 7 extends the provisions of the act to infant trustees and mortgagees of lands in the duchy of Lancaster, or the counties palatine of Chester, Lancaster, and Durham respectively, or the principality of Wales. (See 6 Geo. 4, c. 74, s. 2.)

Section 8 enacts, that where any person seised of any land upon any trust shall be out of the jurisdiction of or not amenable to the process of the court of Chancery, *or it shall be uncertain, where there were several trustees, which of them was the survivor*, or it shall be uncertain whether the trustee *last known to have been seised as aforesaid* be living or dead, *or, if known to be dead, it shall not be known who is his heir;* or if any trustee seised as aforesaid, *or the heir of any such trustee*, shall neglect or refuse to convey such land *for the space of twenty-eight days next after a proper deed for making such conveyance shall have been tendered for his execution by, or by an agent duly authorized by, any person entitled to require the same;* then it shall be lawful for the said court of Chancery to direct a person in the place of the trustee *or heir*, to convey such land to such person and in such manner as the said court shall think proper. (See 6 Geo. 4, c. 74, s. 5, with which this section corresponds.)

Section 9 enacts, that where any person possessed of any land for any term of years upon any trust shall be out of the jurisdiction of or not amenable to the process of the court of Chancery, *or it shall be uncertain whether the trustee last known to have been possessed as aforesaid be living or dead;* or if any trustee possessed as aforesaid, *or the executor of any such trustee*, shall neglect or refuse to assign or surrender such land *for the space of twenty-eight days next after a proper deed for making such assignment or surrender shall have been tendered for his execution by, or by an agent duly authorized by, any*

person entitled to require the same; then it shall be lawful for the said court of Chancery to direct any person whom such court may think proper to appoint for that purpose, in the place of the trustee *or executor*, to assign or surrender such land to such person and in such manner as the court shall think proper. (See 6 Geo. 4, c. 74, s. 5, with which this section corresponds.)

Section 10 enacts, that where any person in whose name, as a trustee *or executor*, (*either alone or together with the name of any other person,*) *or in the name of whose testator*, (*whether as a trustee or beneficially*) any stock shall be standing, *or any other person who shall otherwise have power to transfer or join with any other person in transferring any stock to which some other person shall be beneficially entitled*, shall be out of the jurisdiction of or not amenable to the process of the court of Chancery, or it shall be uncertain whether such person be living or dead; or if any such trustee or executor or other person shall neglect or refuse to transfer such stock, or receive and pay over the dividends thereof, to the person entitled thereto or to any part thereof respectively, or as he shall direct, *for the space of thirty-one days next after a request in writing*, then it shall be lawful for the court of Chancery to direct such person as the said court shall think proper to appoint for that purpose, in the place of such trustee or executor or other person, to transfer such stock to or into the name of such person and in such manner as such court shall direct, and also to order any person appointed as aforesaid to receive and pay over or join in receiving and paying over the dividends of such stock in such manner as the said court shall direct. (See 6 Geo. 4, c. 74, s. 7, with which this section corresponds.)

Section 11 enacts, that every direction to be made in pursuance of this act by the lord chancellor, shall be signified by an order upon petition in the lunacy or matter, of the person or some or one of the persons beneficially entitled to the land, or stock, to be conveyed, transferred, or paid; and if the same shall relate to a conveyance in order to vest any land or stock in a new trustee, then upon the petition either of the trustee in whom the same shall be proposed to be vested, or of any person having an interest therein; and if the same shall relate to the conveyance of an estate in mortgage, then upon the petition of the person entitled to the equity of redemption thereof, or of the person entitled to the monies thereby secured, or the guardian or committee of the person entitled to such monies, if an infant or lunatic. (See 6 Geo. 4, c. 74, s. 8., with which this section corresponds.)

By section 12, the lord chancellor, in cases of doubt, may order a bill to be filed to establish the rights of the parties.

Section 13 enacts that any committee, infant, or other person, directed, by virtue of this act, to make any conveyance or transfer, may be

compelled to make the same in like manner as trustees of full age, and of sane mind. (See 6 Geo. 4. c. 74, s. 9.)

Section 14 enacts, that where the person to whom any money shall be payable, towards the redemption of any mortgage, of which a release shall be obtained under this act, shall be an infant, it shall be lawful for the person by whom such money shall be payable, to pay the same into the bank of England, to the credit of such infant, to be invested in the public funds. (See 6 Geo. 4. c. 74, s. 16.)

Section 15 enacts, that every person shall be a trustee within the meaning of this act, notwithstanding he may have some beneficial estate or interest in the same subject, or may have some duty as trustee to perform; but the court shall have power to order a bill to be filed, to establish the rights of the parties. (See 6 Geo. 4. c. 74, s. 10.)

Section 16 enacts, that where any land shall have been contracted to be sold, and the vendor shall have departed this life, either having received the purchase-money for the same, or some part thereof, or not having received any part thereof, and a specific performance of such contract shall have been decreed by the court of Chancery in the life-time of such vendor, or after his decease, or where one person shall have purchased an estate in the name of another, but the nominal purchaser shall, on the face of the conveyance, appear to be the real purchaser, and there shall be no declaration of trust from him, and a decree of the said court, either before or after the death of such nominal purchaser, shall have declared such nominal purchaser to be a trustee for the real purchaser, then the heir of such vendor, or such nominal purchaser, or his heir, in whom the premises shall be vested, shall be, and be deemed to be a trustee for the purchaser within the meaning of this act. By this and the four next sections it will be seen that this act is extended to all constructive trusts, to which the former act 6 Geo. 4, c. 74, was held not to apply. Sug. Vend. 182., 8th edit.

Section 17 enacts, that where any land shall have been contracted to be sold, and the vendor shall have departed this life, having devised the same in settlement so as to be vested in any person for life, or other limited interest, with any remainder which may not be vested, or may be vested in some person from whom a conveyance of the same cannot be obtained, or by way of executory devise, and a specific performance of such contract shall have been decreed by the court of Chancery, it shall be lawful for the court to direct any such tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey the fee-simple to the purchaser.

Section 18 enacts, that the several provisions hereinbefore contained shall extend to every other case of a constructive trust, or trust arising or resulting by implication of law; but in every such case where the

alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer, no order shall be made for the execution of a conveyance or transfer by such alleged trustee, until after it has been declared by the court of Chancery, in a suit regularly instituted in such court, that such person is a trustee for the person so seeking a conveyance or transfer; but this act shall not extend to cases upon partition, or cases arising out of the doctrine of election in equity, or to a vendor, except in any case hereinbefore expressly provided for.

Section 19 enacts, that where any feme covert would be a trustee, mortgagee, heir, or executor, within the provision of this act, if she were an infant or lunatic, or out of the jurisdiction, or not amenable to the process of the court of Chancery or Exchequer, or had refused or neglected as aforesaid to execute or make such conveyance, transfer, receipt, or payment, as hereinbefore is mentioned, and the concurrence of her husband shall be necessary in any conveyance, transfer, or payment, which ought to be made or executed by her as such trustee, mortgagee, heir, or executor, then and in any such case such husband, whether under any disability or not, shall be and be deemed to be a trustee within the meaning of this act.

Section 20 enacts, that the provisions hereinbefore contained for obtaining conveyances from any person being lunatic shall extend to and include all persons, being lunatic, who, by force of any law for payment of debts out of real estate, would or hereafter may be compellable to convey any land if of sound mind.

Section 21 enacts, that the provisions hereinbefore contained shall extend to all cases of petitions in which the lord chancellor is by law authorised and empowered to grant relief and make summary orders without suit, either in matters of charity, or relative to or for the better security, or for the application of the funds thereof, or in matters relative to any benefit or friendly societies, or for the better security, or for the application of the funds thereof. (See 6 Geo. 4. c. 74, s. 11.)

Section 22, reciting that cases may occur, upon applications by petition under this act for a conveyance or transfer, where the recent creation or declaration of the trust, or other circumstances, may render it safe and expedient for the lord chancellor to direct, by an order upon such petition, a conveyance or transfer to be made to a new trustee or trustees, without compelling the parties seeking such appointments to file a bill for that purpose, although there is no power in any deed or instrument creating or declaring the trusts of such lands or stock to appoint new trustees; it is enacted, that in any such case it shall be lawful for the lord chancellor to appoint any person to be a new trustee, by an order to be made on a petition to be presented for a conveyance or transfer under this act, after hearing all such parties as the said court shall think necessary; and thereupon a conveyance or transfer shall and may be made and executed, according to the pro-

visions hereinbefore contained, so as to vest such land or stock in such new trustee, either alone or jointly with any surviving or continuing trustee, as effectually, and in the same manner as if such new trustee had been appointed under a power in any instrument creating or declaring the trusts of such land or stock, or in a suit regularly instituted.

Section 23 enacts, that where all the persons in whom any lands may have been vested in trust for any charity shall be dead, it shall be lawful for the court of Chancery, on the petition of the persons or body administering such charity, to direct any master or other officer of the said court to cause two successive advertisements to be inserted in the London Gazette, and in one or more of the newspapers circulated in the county, city, or place where such land shall be situated, giving notice that the representative of the last surviving trustee do, within twenty-eight days, appear, or give notice of his title to such master or other officer, and prove his pedigree or other title as trustee: and if no person shall appear to give such notice within such twenty-eight days, or the person who may appear or give such notice, shall not, within thirty-one days after such appearance or notice, prove his title to the satisfaction of such master or other officer, then and in such case it shall be lawful for the said court to appoint any new trustees for such charity or charitable public purpose; and such land may be conveyed to such new trustees by any person whom the said court respectively may direct for that purpose, by virtue of the provisions in this act, without the necessity of any decree.

Section 24 enacts, that where, in any suit commenced or to be commenced in the court of Chancery, it shall be made to appear to the court by affidavit, that diligent search and inquiry has been made after any person made a defendant, who is only a trustee, to serve him with the process of the court, and that he cannot be found, it shall be lawful for the said court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question, in such manner as if such trustee had been duly served with the process of the court, and had appeared and filed his answer thereto, and had also appeared by his counsel and clerk at the hearing of such cause; provided always, that no such decree shall bind any person against whom the same shall be made without service of process upon him as aforesaid, his heirs, executors, or administrators, for or in respect of any estate, right, or interest, which such person shall have at the time of making such decree, for his own use or benefit, or otherwise than as a trustee as aforesaid.

Section 25 enacts, that the lord chancellor may order the costs relating to the petitions, conveyances, and transfers, to be made in pursuance of this act, to be paid from the land or stock, or the rents or di-

vidends, in respect of which the same respectively shall be made. (See 6 Geo. 4, c. 74, s. 17, with which this section corresponds.)

Section 26 enacts, that the powers given by this act to the lord chancellor of Great Britain, shall extend to all land and stock within any of the colonies belonging to his majesty, except Scotland and Ireland.

Section 27 enacts, that the powers given by this act to the lord chancellor of Great Britain, shall be exercised by the lord chancellor of Ireland, with respect to all land and stock in Ireland.

Section 28 gives the powers of the lord chancellor to the lord keeper and commissioners.

Section 29 enacts, that the powers given by this act to the court of Chancery in England, shall extend to all land and stock within any of the colonies belonging to his majesty (except Scotland): and (sec. 30,) may be exercised by the court of Exchequer.

Section 31 enacts, that powers given to courts in England may be exercised by the same courts in Ireland.

Section 32 enacts, that in all cases in which orders shall be made in pursuance of this act, for the transfer of stock, the person to be named in such order for making such transfer, shall *either be the committee of the estate of the person being lunatic, in whose place such transfer shall be made, or a co-trustee or co-executor of the person in whose place such person shall be directed to transfer, or some officer* of the company or society in whose books the same respectively shall be directed to be made. (See 6 Geo. 4, c. 74, s. 15, with which this section corresponds.)

Section 33 enacts, that this act shall be declared to be a full and complete indemnity and discharge to the governor and company of the bank of England, and all other companies and societies, for all acts done pursuant thereto. (Corresponds with the 6 Geo. 4, c. 74, s. 16.)

Mode of appointing trustees under the act.

Under this act, then, according to the particular circumstances of the case, a petition is presented or a bill filed. Where the property is very small, and the facts very clear, and are supported by satisfactory affidavits, the prayer of the petition or bill has been granted at once; but in general there is a reference to the master to inquire into the circumstances, and appoint a fit person or persons to be the new trustee or trustees. See ——— v. *Roberts*, 1 Jac. & W. 251. *Attorney-General* v. *Dyson*, 2 Sim. & Stu. 528.

The appointment being made and the master's report confirmed, the property is transferred to the new trustee or trustees alone, or together with the old trustees, who continue to act, as the case may be.

An application therefore can be made under this act, either when there are no clauses for changing trustees contained in the instrument, or when the clauses so introduced do not extend to the event that has happened.

Whenever the court of Chancery has power over the legal estate, either by virtue of this act or otherwise, it will make the appointment; but it will not authorize the insertion of a clause for the appointment of new trustees for the future. *Bayley* v. *Mansell*, 4 Madd. 226. *Southwell* v. *Ward*, Taml. 314. Neither can the court give to the new trustees any discretionary power, which the original trustees might have exercised, (*Hibbard* v. *Lambe*, Amb. 309,) except in the case of trusts for charities, as, in these, the court will sometimes direct the mode for the application of the trust property. *Attorney General* v. *Stickman*, 2 Eq. Ca. Ab. 193. *White* v. *White*, 1 Bro. C. C. 12. *Moggridge* v. *Thackwell*, 3 Bro. C. C. 517. S. C. 1 Ves. jun. 164. and 8 Ves. 36.

Where the usual powers for changing trustees are inserted in the deed or will, and one of the trustees dies or becomes incapable of executing the trusts, or is desirous of being discharged therefrom, the following course is usually adopted. The person in whom the power to appoint new trustees is vested, appoints the new trustee according to the forms prescribed by the instrument creating the power. The old trustee or trustees, or their representatives, if they be dead, then convey or assign the trust property to the new trustee or trustees alone, or together with the continuing or surviving trustee, as the case may be.

Where all the old trustees are dead, or cease to act in the trusts, it is clear that the surviving trustee, or the heir of the surviving trustee, may convey the trust property to the new trustees, upon the same trusts and with the same powers as were vested in the old trustees; but where some or one of the old trustees continued to act, it was formerly doubted whether the old trustees could convey the trust property to the continuing and the new trustees *at once*; or whether it was not necessary to convey it first to A. B., who by another deed should convey it to the continuing and new trustees. It is, however, now the constant practice for the old trustees to make a conveyance, which operates by way of transmutation of possession, (generally by lease and release,) unto the new trustees and their heirs, or to a releasee to uses, to the use of the old and new trustees and their heirs; but in the case of leaseholds and other personal property, two assignments are still required for that purpose. 1 Sand. Us. & Tr. 130. 4th edit.; because a use, as to them, is not executed by the statute. This practice equally obtains where the trustees are merely trustees to preserve contingent remainders, as when they have the fee-simple. Sug. Pow. 204, 205, 4th edit.

The appointment of the new trustees may be by deed-poll, but is more usually by indenture. The appointment of the new trustee or trustees, and the conveyance of the trust property to him or them, should be by separate deeds.

APPOINTMENT OF NEW TRUSTEE.

DEED *of* APPOINTMENT *of a* NEW TRUSTEE *by the Trustees of a* SETTLEMENT *of Personal Property, under a Power contained in the Settlement for that purpose, the former Trustee desiring to be discharged.*

THIS INDENTURE, made the day of BETWEEN [*remaining trustees*] of, &c. of the first part; [C. D.] of, &c. of the second part; [A. B.] of, &c. of the third part; and [*new trustee*] of, &c. of the fourth part; (*Recite the deed* (*a*) *creating the trustee, with the powers for appointing new trustees*); AND WHEREAS the said [A. B.] is desirous of being discharged from the trusts of the hereinbefore recited indenture; AND WHEREAS the said [*remaining trustee*] has agreed to exercise the power and authority to him given by the said hereinbefore recited indenture, with the consent and approbation of the said [C. D.], and upon the acceptance of the said [*new trustee*] to nominate and appoint the said [*new trustee*] to be a trustee of the said hereinbefore recited indenture, and of the trust-monies, stocks, funds, and securities therein mentioned, in the room and stead of the said [A. B.], and in conjunction with the said [*remaining trustee*]; *And* it is intended that the said trust-monies, stocks, funds, and securities should thereupon be transferred into the names of the said [*new trustee and remaining trustees*], upon the trusts, and subject to the provisions and agreements in the said hereinbefore recited indenture declared and contained concerning the same respectively: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by

Parties.

Recital that A. B is desirous of being discharged.

Agreement to nominate a new trustee.

Witnessing part, whereby remaining trustee, appoints new

(*a*) See a recital of such a deed, *post*, p. 575, and INDEX, word RECITALS.

APPOINTMENT OF NEW TRUSTEE.

trustee, with the consent of another person.

the said [*new trustee*] to the said [*remaining trustee*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), pursuant to and by force and virtue and in exercise and execution of the power or authority to him for this purpose given or limited by the said hereinbefore recited indenture of the day of , and of every or any other power or authority in anywise enabling him in this behalf, and with the consent of the said [C. D.], HE the said [*remaining trustee*], *Doth* by this present deed or writing, by him sealed and delivered in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses, attesting the sealing and delivery of these presents by him the said [*remaining trustee*], nominate and appoint the said [*new trustee*] to be a trustee of the said hereinbefore recited indenture, and of the trust-monies, stocks, funds, and securities therein mentioned, in the room and stead of the said [A. B.]; *And* to act in conjunction with the said [*remaining trustee*] in the execution of the several trusts, powers, and authorities in the said hereinbefore recited indenture declared and contained, or such and so many of them as are now subsisting, and capable of taking effect. IN WITNESS, &c. (*b*).

Practical directions.

(*b*) The appointment of the new trustee, and the conveyance of the trust property to him, is sometimes made by one deed. It is however more correct to have two deeds.

APPOINTMENT OF NEW TRUSTEE.

DEED *of* APPOINTMENT *of a New Trustee by the* TRUSTEES *of a Marriage Settlement of Personal Estate, the former Trustee having become lunatic.* (By Indorsement on the Settlement.)

Parties.

THIS INDENTURE, made, &c. BETWEEN the within-named [W. H.] and [T. C. H.] of the first part; the within-named [C. P.] and [L. A.] (now his wife), of the second part; and [J. P.] of, &c. of the third part (*a*); WHEREAS the within-named [J. A.] was, on or about the day of , found and declared lunatic; AND WHEREAS the said [W. H.) and [T. C. H.] have agreed, in exercise of the power or authority to them for that purpose given or limited in and by the within-written indenture, with the consent and approbation of the said [C. P.] and [L.] his wife, and upon the acceptance of the said [J. P.], to nominate and appoint the said [J. P.] to be a trus-

Recital that J. A. has been found a lunatic.

Agreement to appoint new trustee,

Where there is a separate deed.

(*a*) Where there is a separate deed, the following recital should be used:

"WHEREAS by an indenture, &c. made, &c. a sum of one hundred pounds, three per cent. consolidated bank annuities, and a sum of two hundred pounds, &c. in the said indenture described, and therein mentioned to have been transferred and to be then standing in the names of the said [J. A.], [W. H.], and [T. C. H.], in the books of the governor and company of the bank of England, were, in consideration of a marriage then intended and shortly afterwards solemnized between the said [C. P.] and [L. A.] (now his wife), and for the considerations in the said indenture mentioned, were settled upon and for the trusts, intents, and purposes in the said indenture now in recital declared and contained concerning the same; *And* by the said indenture now in recital it was, amongst other things, agreed and declared between and by the parties thereto, that" (*set out the power to appoint fully*).

APPOINTMENT OF NEW TRUSTEE.

tee of the said within-written indenture, and of the trust-monies, stocks, funds, and securities therein mentioned, in the room and stead of the said [J. A.], and in conjunction with the said [W. H.] and [T. C. H.]; *And* it is intended that the said trust-monies, stocks, funds, and securities, should thereupon be transferred into the names of the said [J. P.], [W. H.], and [T. C. H.], upon the trusts, and subject to the provisions and agreements in the said within written indenture declared and contained concerning the same respectively: Now THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, THEY the said [W. H.] and [T. C. H.], pursuant to and by force and virtue and in execution of the power or authority to them for this purpose given and limited in and by the said within written indenture, and of every or any other power or authority in anywise enabling them in this behalf, and with the consent and approbation of the said [C. P.] and [L.] his wife, and upon the acceptance of the said [J. P.], (testified by their respectively being parties to and executing these presents) *Do* by this present deed or writing, by them the said [W. H.] and [T. C. H.] signed, sealed, and delivered in the presence of and attested by the two credible witnesses whose names are hereunder written as witnesses, attesting the sealing and delivery of these presents by them the said [W. H.] and [T. C. H.], nominate and appoint the said [J. P.] to be a trustee of the within-written indenture, and of the trust monies, stocks, funds, and securities therein mentioned, in the room and stead of the said [J. A.], and to act in conjunction with the said [W. H.] and [T. C. H.] in the execution of the several trusts, powers, and authorities in the said within-written indenture declared and contained, or such and so many of them as are now subsisting or capable of taking effect. IN WITNESS, &c.

and to transfer the trust monies.

Testatum, whereby trustee is appointed.

CONVEYANCE *of* FREEHOLDS *by* OLD TRUSTEES, *to Releasee to Uses, to the Use of* OLD *and* NEW TRUSTEES, *upon the former Trusts.* CONVEYANCE OF FREEHOLDS.

THIS INDENTURE, made the day of , BETWEEN [*old trustees*] of, &c. of the first part; [A. B.] of, &c. (*releasee to uses*), of the second part; and [*new trustees*] of, &c. of the third part; (*Recite the deed creating the trustees, and the power for changing the trustees; the death of the former trustee, and the appointment of new trustees*); AND WHEREAS it hath been agreed that the said [*old trustees*] should convey the said pieces or parcels of land, hereditaments and premises, comprised in, and granted and released by, the said hereinbefore recited indentures as aforesaid, and their appurtenances, unto the said [*new trustees*], their heirs and assigns, in such manner as is hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*new trustees*] to the said [*old trustees*] at or immediately before the sealing and delivery of these presents paid, (the receipt whereof is hereby acknowledged), THEY the said [*old trustees*], according to their estate, right, and interest under the said hereinbefore recited indentures as aforesaid, and with the privity and approbation of the said [*new trustees*], (testified by their respectively being parties to and sealing and delivering these presents), *Have*, and every of them *Hath*, bargained, sold, and released, *And* by these presents *Do*, and every of them *Doth*, bargain, sell, and release unto the said [A. B.] (in his actual possession now being, &c.) and his heirs, ALL, &c. (*parcels*), *Together* with all and singular, &c. (*general words*), *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of all and singular the pieces or parcels of the

Parties.

Recitals.

Agreement to convey property to new trustees.

Witnessing part, whereby old trustees convey to the new trustees.

Parcels.

And the reversion,

CONVEYANCE OF FREEHOLDS.

lands, hereditaments, and premises hereby granted, released, and confirmed, or intended so to be, and of every part and parcel thereof, *And* all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of them the said [*old trustees*], and each and every of them, in, to, out of, or upon the same premises, and every part and parcel thereof, with their and every of their appurtenances; To HAVE AND TO HOLD the said pieces or parcels of land, hereditaments, and all and singular other the premises hereby released, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [A. B.] and his heirs, *To the use* of the said [*old and new trustees*], their heirs and assigns for ever; *But* nevertheless upon the several trusts, and with, under, and subject to the several powers and provisions in and by the said hereinbefore recited indentures declared and contained of and concerning the same; *And* the said [*old trustees*] *Do* hereby for themselves, their heirs, executors, and administrators, and each of them *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*new trustees*], their heirs and assigns, that they the said [*old trustees*] have not at any time heretofore made, done, omitted, committed, executed, or knowingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said pieces or parcels of land, hereditaments and premises, hereby granted and released, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be in anywise impeached, charged, affected, or incumbered. IN WITNESS, &c.

All the estate,

Habendum to releasee to uses, to the use of the old and new trustees.

Covenant against incumbrances by the old trustees.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

CONVEYANCE *by* OLD TRUSTEES *of* FREEHOLDS *to Releasee to Uses, to the Use of* OLD *and* NEW TRUSTEES *upon the former Trusts; and* ASSIGNMENT *of* LEASEHOLDS *to* [A. B.] *upon Trust to re-assign the Leaseholds to* OLD *and* NEW TRUSTEES *upon the former Trusts.*

THIS INDENTURE, made the day of , BETWEEN [*old trustees*] of, &c. of the first part; [A. B.] of, &c. [*releasee to uses*], of the second part; and [*new trustee*], of, &c. of the third part; (*Recite the deed creating the trustees, and the power of changing the trustees; the deaths of the former trustees; and the appointment of new trustee*): AND WHEREAS it hath been agreed that the said [*old trustees*] should convey and assign the said messuages or tenements, lands, hereditaments, and premises, comprised in and released and assigned by the said hereinbefore recited indenture as aforesaid, with their appurtenances, unto the said [A. B.], his heirs, executors, administrators, and assigns, upon such trusts as are hereinafter mentioned and expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland by the said [A. B.] to the said [*old trustees*], at or immediately before the sealing and delivery of these presents paid (the receipt whereof is hereby acknowledged), THEY the said [*old trustees*], according to their estate, right, and interest under the said hereinbefore recited indentures as aforesaid, and with the privity and approbation of the said [*new trustee*], (testified by his being a party to and sealing and delivering these presents) *Have*, and each and every of them *Hath*, bargained, sold, and released, *And Do*, and each of them *Doth*, hereby bargain, sell, and release, unto the said [A. B.], (in his actual, &c.) and his heirs, ALL, &c. (*parcels*), *Together* with all

Parties.

Recitals.

Agreement that old trustees should convey trust premises upon trusts hereinafter declared.

First witnessing part,

whereby old trustees convey.

Parcels.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

and singular houses, &c. (*general words*), *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of all and singular the messuages, tenements, lands, hereditaments, and premises hereby granted, released, and confirmed, or intended so to be, and of every part and parcel thereof; *And* all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of them the said [*old trustees*], and each and every of them, in, to, out of, or upon the same premises, and every part and parcel thereof, with their and every of their appurtenances; TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby released, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [A. B.] and his heirs, *To the use* of the said [*old and new trustees*], their heirs and assigns for ever; *But* nevertheless upon the several trusts, and with, under, and subject to the several powers and provisions in and by the said hereinbefore recited indentures declared and contained of and concerning the same: *And* the said [*old trustees*] do hereby for themselves, their heirs, executors, and administrators, and each of them doth hereby for himself, his heirs, executors, and administrstors, COVENANT, promise, and agree, with and to the said [*new trustee*], his heirs and assigns, that they the said [*old trustees*] have not at any time heretofore made, done, omitted, committed, executed, or knowingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof, the said messuages or tenements and premises hereby granted and released, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be in anywise impeached, charged, affected, or incumbered: AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the nominal consideration hereinbefore expressed, THEY the said [*old trustees*], according to their estate, right, title, and interest, under or by virtue of the agreement contained in the said hereinbefore recited indenture of the day of , and so far as they

And the reversion.

All the estate,

Habendum to releasee to uses, to the use of the old and new trustees.

Covenant by old trustees that they have not incumbered.

Second witnessing part, whereby old trustees assign

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

can or may, either at law or in equity, and with the privity and approbation of the said [*new trustee*], (so testified as aforesaid) *Have*, and every of them *Hath*, bargained, sold, assigned, transferred, and set over, *And* by these presents *Do*, and each of them *Doth*, hereby bargain, assign, transfer, and set over, ALL, &c. (*parcels*), *Together* with, &c. (*general words*), *And* all the estate, &c. TO HAVE AND TO HOLD the said messuages and tenements, lands, hereditaments, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, and their appurtenances, unto the said [A. B.], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of years created therein by the said hereinbefore recited indenture of lease of the day of as aforesaid, at, under, and subject to the rents, covenants, and agreements, which are payable and to be performed in respect of the same messuages and tenements, hereditaments, and premises, under and by virtue of the same indenture of lease; *But* nevertheless *Upon this trust*, that the said [A. B.] his executors, administrators, and assigns, do and shall forthwith, at the expense of the said trust premises, assign and make over the said messuages, tenements, and premises hereby assigned, or intended so to be, and their appurtenances, unto the said [*old and new trustees*], their executors, administrators, and assigns, for and during the residue and remainder of the said term of years created therein as aforesaid, at, under, and subject to the rents, covenants, and agreements, which are payable and to be performed in respect of the same premises as aforesaid; *But* nevertheless, upon the several trusts, and with, under, and subject to the several powers and provisions in and by the said hereinbefore recited indenture of the day of declared and contained of and concerning the same; *And* the said [*old trustees*] *Do* hereby for themselves, their executors, administrators, and assigns, and each of them *Doth* hereby for himself, his executors, and administrators, COVENANT, promise, and agree with and to the said [*new trustees*], their heirs and assigns, that they the said [*old trustees*] have not, at any time heretofore, made, done, omitted,

leaseholds.

Habendum to A. B., his executors, &c for the residue of the term created in the leaseholds;

upon trust to assign the leaseholds to old and new trustees,

upon the former trusts.

Covenant by trustees that they have not incumbered.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

committed, executed, or knowingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said pieces or parcels of land, hereditaments and premises, hereby assigned, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be in anywise impeached, charged, affected, or incumbered. IN WITNESS, &c.

RE-ASSIGNMENT OF LEASEHOLDS.

RE-ASSIGNMENT *of* LEASEHOLDS *by* [A. B.] *to* OLD *and* NEW TRUSTEES, *upon the former Trusts.* (By Indorsement on the Deed of Assignment to [A. B.]).

THIS INDENTURE, made the day of ,

Parties.

BETWEEN the within-named [A. B.], of the one part, and the within named [*old and new trustees*], of the other part;

Witnessing part, whereby

WITNESSETH, that in execution of the trust in the within-written indenture in this behalf declared and contained, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*old and new trustees*] to the said [A. B.], at or immediately before the sealing and delivery of these presents, paid, (the receipt whereof is hereby acknowledged,)

A. B. assigns the premises secondly described in the within-written indenture,

HE the said [A. B.] *Hath* bargained, sold, assigned, and set over, unto the said [*trustees*], their executors, administrators, and assigns, ALL THOSE the said messuages or tenements and premises in the said within-written indenture secondly described,

and all the estate.

and thereby assigned, with their appurtenances, *And* all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of him the said [A. B.], in, to, out of, or upon the same premises, and every part and parcel thereof, with their and every of their appurtenances,

Habendum to the old and new trustees.

TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and premises hereby assigned, or intended

so to be, and every part thereof, with their appurtenances, unto the said [*old and new trustees*], their executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the within-mentioned term of years created therein, as in the said within-written indenture is mentioned, at, under, and subject to the rents, covenants, and agreements, which are payable and to be performed in respect of the same messuages, or tenements and premises, under or by virtue of the within recited indentures of lease of the day of ; *But nevertheless* upon the several trusts, and with, under, and subject to the several powers and provisions in and by the firstly within recited indenture declared and contained of and concerning the same: *And* the said [A. B.] doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*trustees*], their heirs and assigns, that he the said [A. B.] hath not at any time heretofore made, done, omitted, committed, executed, or knowingly or willingly suffered or permitted, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said messuages or tenements and premises hereby granted and released, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be in anywise impeached, charged, affected, or incumbered. IN WITNESS, &c.

RE-ASSIGNMENT OF LEASEHOLDS.

upon the former trusts.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

CONVEYANCE *of* FREEHOLDS *from* OLD TRUSTEES *to Releasee to Uses, to the Use of* OLD AND NEW TRUSTEES, *Upon Trusts for the Benefit of a* RELIGIOUS SOCIETY. ASSIGNMENT *of* LEASEHOLDS *to* TRUSTEE, *upon Trust to re-assign the same to the* OLD AND NEW TRUSTEES, *upon similar Trusts as the* FREEHOLDS.

Parties.

THIS INDENTURE, made the day of , BETWEEN [W. F.], of, &c. and [J. G.] of, &c. [*the surviving trustees*], of the first part; [*releasee to uses*] of, &c. of the second part; and the said [W. F.], [J. G.], &c. &c. [*the remaining trustees*], [J. H], &c. [*the trustees newly appointed*], of the third part; WHEREAS by an indenture of release and assignment, bearing date, &c. and made, or expressed to be made, between [W. L.] of the first part; [T. L.] of the second part; [W. O.] of the third part; and [W. F.], [J. G.,] &c. of the fourth part; and grounded on a lease for a year therein mentioned or referred to; the piece or parcel of ground hereinafter firstly described, and intended to be hereby released, and the messuages or tenements, and other buildings then erected thereon, or some part thereof, and their appurtenances, were (for the considerations in the said indenture mentioned) conveyed by the said [W. L.] and [T. L.] unto and to the use of the said [W. F.], [J. G.] &c. their heirs and assigns for ever, upon the trusts, and with and subject to the powers and provisoes in the said indenture declared and contained concerning the same, in favour of or for the benefit of the society or institution therein mentioned or referred to, called "The ——— Institution;" *But* subject nevertheless to a lease of the same piece or parcel of ground, messuages or tenements, hereditaments and premises, granted by [J. N.] of, &c. for a term of ninety-nine years, from the twenty-fourth day of , at

Recites release and assignment, whereby freehold hereditaments were conveyed to trustees, in trust for a religious society,

subject to a lease for a term of ninety-nine years;

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

the yearly rent of , by an indenture of lease, bearing date, &c. between, &c. which said lease was afterwards assigned to [J. M.], of, &c. by a certain indenture of assignment, bearing, &c. and made, &c.; *And* by the said indenture of release and assignment now in recital, the piece or parcel of ground hereinafter thirdly described, and intended to be hereby assigned, (being part and parcel of the said piece and parcel of ground hereinafter firstly described and intended to be hereby released) and their appurtenances, was (for the considerations in the said indenture mentioned) assigned by the said [W. O.] unto the said [W. F.], [J. G.], their executors, administrators, and assigns, for and during all the residue and remainder of the term of eighty-four years, to be computed from the day of , created therein by a certain indenture of underlease, bearing date, &c. and made, &c. but subject to the yearly payment of pounds, in the said indenture of underlease reserved, and to the performance of the covenants and agreements thereinafter contained, on the tenant's or lessee's part to be performed; *But* nevertheless upon the trusts, and with and subject to the powers and provisions in the said indenture now in recital declared and contained, in favor or for the benefit of the said Institution; *And* by the said indenture of release and assignment (*recite the assignment of other leasehold premises in the same way*); *And* by the said indenture of release and appointment now in recital it was declared (*recite the power for changing trustees fully*); AND WHEREAS the said [*trustee*] departed this life on or about, &c; and the said [*other trustee*] departed this life on or about, &c.; AND WHEREAS by an indenture of release, bearing date, &c. indorsed on the said hereinbefore recited indenture of release and appointment, made, &c. between, &c. (*other freehold hereditaments were conveyed to trustees upon the like trusts as before*); *And* in the said indenture now in recital was contained a similar power in regard to the appointment of new trustees, as was in that behalf contained in the said hereinbefore recited indenture of release and appointment; AND WHEREAS since the execution of the said lastly hereinbefore recited indenture, the said [W. P.], &c. have severally departed this life;

and leasehold premises were assigned to the trustees upon the like trusts.

Power for changing trustees.

Death of two trustees,

Recital of indenture of release.

Death of other trustees;

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

and that another wishes to be discharged.

Appointment of new trustees pursuant to the power.

Agreement to convey.

First witnessing part, whereby trustees convey the freeholds.

Parcels.

Reference to a plan.

AND WHEREAS the said [G. M.] is desirous of being discharged from the trusts of the said hereinbefore recited indentures; AND WHEREAS at a meeting of the committee of the said Institution, held at, &c. on the day of now last past, and duly convened for that purpose, the said [J. H.], &c. &c. were duly constituted and appointed [*trustees*] of the said hereinbefore recited indentures, in the place and stead of the said [*deceased trustees*], &c. &c., in conjunction with the said [W. F.], &c. &c.; AND WHEREAS it hath been agreed that the said [W. F.], [J. G.], &c. &c. should convey and assign the said pieces or parcels of land or ground and premises comprised in and released and assigned by the said hereinbefore recited indentures as aforesaid, and their appurtenances, unto the said [*releasee to uses*], his heirs, executors, administrators, and assigns, in such manner as is hereinbefore mentioned and expressed: Now THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the premises, and of ten shillings of lawful money of Great Britain and Ireland, by the said [J. H.], &c. to the said [W. F.] [J. G.], &c. paid, at or immediately before the sealing and delivery of these presents, THEY the said [W. F.], &c. according to their estate and interest, under the grants and releases contained in the hereinbefore recited indentures as aforesaid, and with the privity and approbation of the said [*new trustees*], testified by their respectively being parties to and sealing and delivering these presents, *Have*, and every of them *Hath*, bargained, sold, and released, and by these presents *Do*, and every of them *Doth*, bargain, sell, and release unto the said [*releasee to uses*], (in his actual, &c.) and his heirs, ALL THAT piece or parcel of ground, situate, lying, and being in the parish of, &c. (*describe fully*), (which said piece or parcel of ground hereinbefore described is more particularly described or delineated in a map or plan drawn in the margin of these presents, and is therein distinguished by, &c.) *And* ALL THAT other piece or parcel, &c. which said piece or parcel of ground secondly hereinbefore described is more particularly described or delineated in a map or plan drawn in the margin of these presents, and is therein distinguished by, &c.) *Together* with, &c. (*general words*), *And* the rever-

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

sion, &c. *And* all the estate, &c. and every part thereof, under or by virtue of the said grants and releases hereinbefore contained in the said hereinbefore recited indentures as aforesaid, but not further or otherwise; To HAVE AND TO HOLD the said pieces or parcels of ground, messuages or tenements, and all and singular other the premises hereby released, and intended so to be, and every part thereof, with their and every of their appurtenances, (subject and without prejudice to the hereinbefore recited indenture of lease, of, &c. and the term of ninety-nine years thereby created as aforesaid), unto the said [*releasee to uses*] and his heirs, *To the use* of the said [J. G.] &c. (*the remaining old and new trustees*], their heirs and assigns for ever; *But nevertheless* upon the several trusts, and with, under, and subject to the several powers and provisions in and by the said hereinbefore recited indentures declared, contained, or referred to, of and concerning the same; *And* each of them the said [W. F.] [J. G.], &c. [*the remaining trustees*], and [G. M.] [*retiring trustee*] do hereby COVENANT (*against incumbrances, as ante*, p. 578): AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the nominal consideration hereinbefore expressed, THEY the said [W. F.], [J. G.], &c. according to their estate, right, title, and interest, under or by virtue of the said assignment or assignments contained in the said firstly hereinbefore recited indentures as aforesaid, and so far as they can or may, at law or in equity, but not further or otherwise, and with the privity and approbation of the said [*new trustees*] (so testified as aforesaid), *Have*, and each of them *Hath*, bargained, sold, assigned, transferred, and set over, and, &c. unto the said [*trustee*] (*a*), his executors and administrators, ALL THAT piece or parcel, &c. (which said piece or parcel lastly hereinbefore described is part and parcel of the piece or parcel of ground firstly

Habendum to releasee to uses, to the use of old and new trustees.

Upon trusts hereinbefore declared.

Covenant against incumbrances.

Second testatum, whereby the trustees assign the leaseholds to trustee.

Parcels.

(*a*) The same person is always releasee to uses and trustee, usually the solicitor of the parties.

Practical directions.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

hereinbefore described, and is the same piece or parcel of ground which was comprised in and demised by the said hereinbefore mentioned indenture of underlease, of, &c. as aforesaid, and is more particularly described or delineated in the map, &c.; *And also*, ALL THAT, &c. (which said piece or parcel of ground lastly hereinbefore described is another part or parcel of the said piece or parcel of ground firstly hereinbefore described, and is the same piece or parcel of ground which is comprised in and demised by the said hereinbefore recited indenture of underlease, of, &c. and is more particularly described in the map, &c.) *Together* with, &c. (*general words*), *And* all the estate, &c. under or by virtue of the said assignment or assignments contained in the said firstly hereinbefore recited indenture as aforesaid, To HAVE AND TO HOLD the said pieces or parcels of ground, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, with their appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said several terms of years and years created therein by the said hereinbefore mentioned indentures of underlease, of, &c. as aforesaid, at, under, and subject to the rent, covenants, and agreements, which are payable and to be performed in respect of the same pieces or parcels of ground and premises hereby assigned, or intended so to be, and their appurtenances, under or by virtue of the said indentures of lease, *Upon this trust*, that the said [*trustee*], his executors or administrators, do and shall forthwith, at the expense of the said trust premises, assign and make over the said pieces or parcels of ground and premises hereby assigned, or intended so to be, and their appurtenances, unto the said [W.F.], [J.G.] &c. [*remaining old and new trustees*], their executors, administrators, and assigns, for and during the residue and remainder of the said several terms of years and years, created therein as aforesaid, at, under, and subject to the rents, covenants, and agreements, which are payable and to be performed in respect of the same premises as aforesaid; *But nevertheless* upon

Habendum to trustee,

upon trust to re-assign them to the old and new trustees, upon the former trusts.

the several trusts, and with, under, and subject to the several powers and provisions in and by the said hereinbefore recited indenture declared and contained, or referred to, of and concerning the same. (*Covenant by the old trustees with* [*trustee*], *that they have not incumbered. See ante, p.* 581 (*b*)). IN WITNESS, &c.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

(*b*) For a form of a deed of re-assignment, see *ante*, p. 582.

Deed of re-assignment.

INDEX TO THE NOTES

IN

VOL. VIII.

A.

ACCUMULATION—*See* PERPETUITY.
what, can be made of the produce of real and personal property, 142.
though void for the whole extent, may be sustained as to part, where, 144, 145.
where an, during the life of an unborn person, will be permitted, 144—147.
whether the term of 21 years allowed by the act 40 Geo. 3, c. 98, may be an absolute term, not depending on a minority, 146—148.

APPOINTMENT,
to grandchildren, when void, 17—21.
what, may be made according to the rules against a perpetuity, 18,

B.

BANKRUPT,
distinction between discharge as a, and as an insolvent, 311.

BONDS OF RESIGNATION,
what are now valid, 60—63.

C.

CANAL SHARES,
observations on mortgages of, 378.

CHARITIES,
under the care of the Chancellor, as keeper of the King's conscience, 297.
rules as to preparing deeds for, 299—301.
legal meaning of the word, 301.

CHATTELS,
belonging to husband, may be settled, 156.
in settlement of, a schedule should always be employed, 183, 345.

CHURCH,
what constitutes a, 426.
as to the manner of consecrating, 426.
the mode now generally used, 428.
acts for building new churches, 438.

CONVERSION,
when a trust for sale effects a conversion of real estate into personal estate, 290.

CORPORATIONS,
right of, to purchase lands, how restricted, 292—295.

COPYHOLDS,
how, may be settled, 37.
how covenant to surrender will be carried into execution, 45.

COVENANT,
not to sue, effect of, 488, 495.

D.

DISSENTERS,
deeds for establishment of meeting-houses for, rules as to preparing, 302.
as to appointing ministers over congregations of *, 302.
Equity will not allow a congregation to change the form of worship, where there is a trust for a particular mode of faith, 302.
meeting-houses for, must be certified and registered, 303, 304.
where meeting-houses of, are liable to taxes, 305.

E.

EXECUTOR,
renews a lease for the benefit of legatees, 51, 52.

---

* And see *Porter and others* v. *Clarke*, 2 Sim. 520.

G.

GRAND-CHILDREN,
appointment to, when void, 17, 21.

I.

ILLEGITIMATE CHILDREN,
rule as to gifts to, 175.
INSURANCE,
who may insure the life of another, 31, 32.
INVENTORY,
when, should be adopted, 345.

L.

LEASEHOLDS, — *See* EXECUTOR, PARTNER, TENANT FOR LIFE, TRUSTEES.
as to renewal of, 50—53.
settlement of, direction as to, 53.
LETTER OF LICENSE,
where given, 320.

M.

MARRIAGE SETTLEMENT.—*See* COPYHOLDS, MORTGAGE.
of monies secured by policy of insurance, 32.
leaseholds, direction as to, 53.
may be made of chattels belonging to husband, 156.
MARRIED WOMAN.—*See* PARAPHERNALIA.
what property, may take from her husband, 170.
MORTGAGE.—*See* TRANSFER.
where money secured upon, is made the subject of a marriage settlement, what course should be adopted, 27.
whether husband can assign his wife's, 199.
where, should be kept on foot, 261—265.
whether power of sale in, affects right of foreclosure, 290.
on the transfer of a, for a charitable purpose, the mortgage would be real estate in reference to mortmain, 299.

MORTGAGEE,
is not bound to transfer, 196.

MORTGAGOR,
where, should join in transfer, 196.

MORTMAIN.—*See* CORPORATIONS.
history of statute of, 295.
observations on statute of, 296.
on Mr. Hodgkins's act, 297.
what gifts are void, as gifts in, 298—300.
conveyances for protestant dissenters are held to be within, 301.

P.

PARAPHERNALIA,
what are to be considered as, 74.
husband cannot dispose of, 74,
right to, may be varied by settlement, 75.

PARTNER,
if one, renews a lease, he does so for the benefit of the others, 53.

PERPETUITY,—*See* ACCUMULATION, APPOINTMENT.
rule against, stated, 147.
exception to, 147.
there can be no, of leaseholds, 148.
a general power to trustees, on the birth of sons of tenants for life to revoke their estates tail, and limit to them estates for life, is void, as tending to a, 151.

PROBATE DUTY,
where the payment of, may be evaded, 188—191.

S.

SEPARATION,
where a deed which contemplates a future, will be valid, 181.

SETTLEMENT—*See* MARRIAGE SETTLEMENT.
where a voluntary, will not be revoked by a settlement for a valuable consideration, 181.
when a schedule should be employed in, 183.
where a voluntary, in favor of a guardian, physician, or legal adviser, will be supported, 182, 183.
what voluntary, will be valid, which is intended to defeat the probate duty, 188—191.
for the payment of debts, where void, 366.

STAMP,
on transfers, 199, 201, 217.
trust-deeds, 338.
deed for securing debts, 344.

T.

TENANT FOR LIFE,
if, of leaseholds, renews a lease, he does so for the benefit of those in remainder, 51, 52.

TRANSFER,
definition of deeds of, 195.
where applied to an assignment of a mortgage, *ib.*
on what occasions transfers of mortgages are made, *ib.*
effect of, 196, 197.
by whom the expenses of, should be paid, *ib.*
what costs may be tacked to the principal on, *ib.*
points to be attended to on, *ib.*
how, of a mortgage-debt, secured by a promissory note, should be made, 198.
how, of equitable mortgage, should be made, 198.
stamp to which a, is subject, 199, 201—217.
practical directions as to, 203, 209, 261.
different modes of preparing, of mortgages, 283, 284.

TRUST-DEEDS,
by way of security, 289.
cases in which they are used, *ib.*
how they are prepared, 289.
manner in which such securities should be transferred, 290.
when liable to mortgage duty, *ib.*
for charitable and religious purposes, 292.
objects of, 292.
rules as to preparing, 299, 301.
on arrangements between debtors and creditors, 306.
where they will be valid, 306.
distinction between composition deeds made by persons in trade and not in trade, 308—310.
where, by a trader, will be void, 310, 311.
objections to, before late bankrupt act, 312.
caution as to preventing, being an act of bankruptcy, 312, 313.
where a composition deed is binding at law, 314.
where it will be relieved against in equity, 314, 315.

TRUST-DEEDS (*continued*).
rights under, 316, 317.
as to the mode in which a trust for payment of debts is executed, 317.
practical directions as to, 366, 378, 440, 469, 473.
the Court of Chancery, on directing payment of a legacy to a charity, usually requires the trustees to execute, 385.

TRUSTEE-DEEDS,
practical directions as to, 572, 574.

TRUSTEES, where, are attornies, their costs and expenses should be allowed as between solicitor and client, 291.
renew for the benefit of *cestui que trust*, 48,
although there is no covenant for renewal contained in the lease, 49.
or tenant-right, 49, 50.
the same principle applies to all persons in the situation of, 51.
if, of mortgagor, buy a mortgage, they will be allowed only what they gave for it, 198.
rules for the appointment of new, 564, 572.
analysis of act for the appointment of, 564—571.
mode of appointing trustees under the act, 571, 572.

END OF VOL. VIII.

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